United States Court of Appeals

for the Second Circuit

APPENDIX

76-1044

B
P/S

To be argued by
NANCY ROSNER

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1044

UNITED STATES OF AMERICA,

Appellee,

—v.—

VIRGIL ALESSI,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX FOR THE APPELLANT VIRGIL ALESSI

NANCY ROSNER,
Attorney for Appellant,
401 Broadway,
New York, New York 10013.
(212) 925-8844

DAVID TRAGER,
United States Attorney for the Eastern District of New York,
Attorney for Appellee.

UNITED STATES COURT OF APPEALS
FILED
MAR 15 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

INDEX TO APPENDIX

	PAGE
INDICTMENT	A-1
MEMORANDUM & OPINION, JUDGE JUDD	A-6
DEFENDANT'S NOTICE OF MOTION & AFFIDAVIT	A-11
GOVERNMENT AFFIDAVIT IN OPPOSITION	A-18
DEFENDANT'S AFFIDAVIT IN RESPONSE	A-20
ALESSI MINUTES	A-22
PAPA MINUTES	A-53
BRIEANT MINUTES	A-106
JUDD MINUTES	A-183
NOTICE OF APPEAL	A-202

TPF:lag
P.#

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ APR 14 1975 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

VIRGIL ALESSI,

Defendant.

- - - - - - - - - - - - - - - - - - - X

Cr. No.
(26 U.S.C., Section 7203;
26 U.S.C., Section 7201)

75CR 295

THE GRAND JURY CHARGES:

COUNT ONE

During the calendar year 1968, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a gross income of approximately Thirteen Thousand Dollars ($13,000.00); that by reason of such income he was required by law following the close of the calendar year 1968 and on or before April 15, 1969, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the Eastern District of New York, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT TWO

During the calendar year 1968, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a taxable income of approximately Ten Thousand Two Hundred Dollars ($10,200.00); that upon said taxable income he owed to the United States of America

BEST COPY AVAILABLE

income tax in the amount of approximately Two Thousand, Three Dollars and Eighty Cents ($2,003.80); that he was required by law on or before April 15, 1969, to make an income tax return to the Internal Revenue Service, and to pay such income tax; that well knowing the foregoing facts, the said VIRGIL ALESSI on or about April 15, 1969, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

COUNT THREE

During the calendar year 1969, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a gross income of approximately Fifteen Thousand Dollars ($15,000.00); that by reason of such income he was required by law following the close of the calendar year 1969 and on or before April 15, 1970 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the Eastern District of New York, or to the Director of the Internal Revenue Service Center, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue or the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT FOUR

During the calendar year 1969, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a taxable income of approximately Twelve Thousand Two Hundred Dollars ($12,200.00); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Two Thousand Five Hundred Forty One Dollars ($2,541.00); that he was required by law on or before April 15, 1970 to make an income tax return to the Internal Revenue Service, and topay such income tax; that well knowing the foregoing facts, the said VIRGIL ALESSI on or about April 15, 1970, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service, said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

COUNT FIVE

During the calendar year 1970, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a gross income of approximately Twenty Five Thousand Dollars ($25,000.00); that by reason of such income he was required by law following the close of the calendar year 1970 and on or before April 15, 1971 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the Eastern District of New York, or to the Director of the Internal Revenue Service Center, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the

BEST COPY AVAILABLE

said District Director of Internal Revenue or the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT SIX

During the calendar year 1970, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a taxable income of approximately Nineteen Thousand One Hundred Twenty Four Dollars and Eighty Six Cents ($19,124.86); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Four Thousand Two Hundred Thirty Eight Dollars and Thirty Three Cents ($4,238.33); that he was required by law on or before April 15, 1971 to make an income tax return to the Internal Revenue Serivce, and to pay such income tax; that well knowing the foregoing facts, the said VIRGIL ALESSI on or about April 15, 1971, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

COUNT SEVEN

During the calendar year 1971, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a gross income of approximately Forty Five Thousand Dollars ($45,000.00); that by reason of such income he was required by law following the close of the calendar year 1971 and on or before April 15, 1972 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn at Brooklyn, New York, in the

Eastern District of New York, or to the Director of the Internal Revenue Service Center, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue or the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. (Title 26, United States Code, Section 7203).

COUNT EIGHT

During the calendar year 1971, VIRGIL ALESSI, the defendant, a resident of Queens, New York, had and received a taxable income of approximately Thirty Seven Thousand Two Hundred Twenty One Dollars and Sixty Six Cents ($37,221.66); that upon said taxable income he owed to the United States of America income tax in the amount of approximately Nine Thousand Thirty Six Dollars and Twelve Cents ($9,036.12); that he was required by law on or before April 15, 1972 to make an income tax return to the Internal Revenue Service, and to pay such income tax; that well knowing the foregoing facts, the said VIRGIL ALESSI on or about April 15, 1972, in the Eastern District of New York, did wilfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay said Internal Revenue Service said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income. (Title 26, United States Code, Section 7201).

A TRUE BILL.

Robert Schell
FOREMAN

David G. Trager
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA 75-CR-295

- against -

VIRGIL ALESSI,

Defendant. January 21, 1976

----------x

Appearances:

LENEFSKY, GALLINA, MASS & HOFFMAN, ESQS.
Attorneys for Defendant

By: GINO E. GALLINA, ESQ.
JOEL A. BRENNER, ESQ.
of Counsel

HON. DAVID G. TRAGER
United States Attorney
Attorney for United States of America

By: RAYMOND J. DEARIE, ESQ.
Assistant United States Attorney
of Counsel

J U D D, J.

MEMORANDUM AND ORDER

Defendant has moved for dismissal of this income tax indictment against him on the grounds of double jeopardy and denial of due process, and has requested an evidentiary hearing.

Facts

The defendant was indicted on April 14, 1975 on eight counts of filing false income tax returns and attempting to evade federal income tax for the years 1968, 1969, 1970, and 1971.

His claims of double jeopardy and due process violation were considered in connection with subsequent indictments for conspiracy to deal in narcotics. United States v. Virgil Alessi, Vincent Papa, et al, 75-CR-686, 75-CR-687. In that case, he and his codefendant Papa and other codefendants similarly moved to dismiss the indictment upon due process and double jeopardy claims. The court rendered an oral opinion in that case on October 17, 1975, based on the following facts. Messrs. Papa and Alessi and other codefendants were indicted in this court on May 1, 1972 for conspiracy to traffic in heroin between April 1, 1967 and December 18, 1971 (72-CR-473). On September 5, 1972, codefendant Papa entered a plea of guilty to the conspiracy count in that indictment in satisfaction of the entire indictment. On the same day codefendant Papa entered a separate plea of guilty to a tax evasion count in a criminal information (72-CR-1058). On October 2, 1972, defendant Alessi entered a plea of guilty to a superseding information (72-CR-1133). His plea was part of a package deal, which included arrangements between James

Druker, head of the government's prosecution team, and his codefendant Papa. Mr. Druker told Mr. Papa that the government would not subsequently indict him for any other portion of the conspiracy even if more evidence were available.

Mr. Papa received a sentence of five years imprisonment, while Mr. Alessi received a five year sentence with execution suspended. Mr. Alessi is still at large, while Mr. Papa is still in confinement.

While Mr. Alessi's plea was made in reliance on the same discussions that had been had with Mr. Druker (Messrs. Papa and Alessi having been represented by the same counsel), there was no income tax indictment under way against Mr. Alessi, and he did not plead to any income tax indictment or information. There was simply a charge in the narcotic conspiracy indictment that he was engaged in a "continuing criminal enterprise" from which he derived substantial income from the sale of narcotics.

In 75-CR-687, after extensive argument and analysis of the plea minutes, the court granted the motion to dismiss the indictment against Mr. Papa and denied it with respect to Mr. Alessi.

On October 28, 1975, when five codefendants in 75-CR-687 pleaded guilty, the government stated that it would move to dismiss that indictment against Mr. Alessi at the time of his codefendants' sentencing, without prejudice to

this income tax case or to an indictment pending in the Southern District of New York.

Discussion

The same reasons which led the court to deny defendant's motion to dismiss 75-CR-687 apply with equal force to the present income tax indictment. Not only was no plea taken to an income tax charge, but the fact that defendant Alessi received more lenient treatment than his codefendant Papa indicates that there is no reason to give an expansive effect to his plea. The reference in the conspiracy charge to the fact that he made money in the narcotics business is not the equivalent of a charge of income tax fraud.

The promise of the government that induced Mr. Alessi to plead guilty to 72-CR-1133 does not extend as far as he asserts here. Even if the promise were construed to cover tax evasion, all that Mr. Alessi would be entitled to is an opportunity to vacate his plea to 72-CR-1133 and reopen all counts of criminal indictment 72-CR-473. Under the circumstances of this case, Mr. Alessi has not suffered enough detriment to be entitled to specific performance of the promise even if it were construed as he contends (and as this court has refused to construe it). See Santobello v. New York, 404 U.S. 257, 263, 92 S.Ct. 495, 499 (1971).

As far as double jeopardy is concerned, there is no overlap of the present indictment and the 1972 narcotics

indictment. The fact that some witnesses who would have testified at the narcotics conspiracy trial will testify at the tax trial, does not create any overlap between the indictments.

There being no substantial dispute about the facts, but primarily about the interpretation of what took place, there is no need for an evidentiary hearing.

It is ORDERED that defendant's motion to dismiss the indictment be denied.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

- against -

VIRGIL ALESSI,

Defendant.

Ind. No. 75 Cr. 295

NOTICE OF MOTION

----------x

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Gino E. Gallina, Esq., dated the 30th day of December, 1975 and upon the annexed Memorandum of Law, the undersigned will move this Court, before the Honorable Orrin Judd, at the United States Courthouse located at 225 Cadman Plaza East, Brooklyn, New York, on the 9th day of January 1976 at 10:00 a.m. or as soon thereafter as counsel can be heard for an order dismissing the within indictment on the grounds of double jeopardy and that prosecution thereunder is barred by a previously entered plea and conviction, or in the alternative for an evidentiary hearing, together with such further relief as to the Court may seem just and proper.

DATED: New York, New York
December 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

- against -

VIRGIL ALESSI,

Defendant.

Ind. No. 75 Cr. 295

AFFIDAVIT

----------x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am a member of the firm of Lenefsky Gallina Mass & Hoffman, attorneys for the defendant Virgil Alessi, and I make this motion in support of the relief sought in the accompanying notice of motion.

2. The defendant herein moves to dismiss the instant indictment upon the grounds that prosecution under it will result in violation of a 1972 plea bargain, thus infringing the rights guaranteed to him under the Fifth Amendment to the United States Constitution to due process and freedom from double jeopardy.

3. The relevant facts are as follows:

a) In 1972, Virgil Alessi and Vincent Papa, among others, were indicted in the Eastern District of New York for conspiracy to violate federal narcotics statutes during the period between April 1967 and December 18, 1971 (72 Cr. 473).

b) In June of 1972, while the indictment was pending, the government's key witness disappeared from the jurisdiction, making successful prosecution

unlikely. As a result of this development a plea argument was negotiated on August 18, 1972, the pertinent terms of which were:

I. Vincent Papa was to plead guilty to Count I of the indictment and Count IV of a then unnumbered tax evasion information.

II. Virgil Alessi, the petitioner, was to plead guilty to a superceding information, (72 Cr. 1133), waiving indictment thereunder.

III. The pleas of Papa and Alessi were to be accepted in satisfaction of the entire Eastern District indictment. In exchange for these pleas the government promised that neither Papa nor Alessi would be subject to further prosecution for any part or piece of the conspiracy which was the subject of the indictment and further that no overt act of that conspiracy would be made the basis of any substantive prosecution.

4. In good faith reliance upon the binding nature of the terms of the plea arrangement, Vincent Papa pled guilty on September 5, 1972 and was sentenced the same day to two concurrent five year terms of imprisonment*. On October 2, 1972 Virgil Alessi pled guilty before the Hon. Anthony J. Travia, and received a five year suspended sentence with a mandatory three year Special Parole**.

5. Following Papa's incarceration, he was indicted in the Southern District of New York (72 Cr. 251. He moved for dismissal, contending that the

*The minutes of this proceeding are annexed as "Exhibit A".

**The minutes of this proceeding are annexed as "Exhibit B".

conspiracy charges contained therein were identical in fact and law to those brought in the Eastern District indictment to which he had entered the guilty plea; in addition, he contended that the substantive counts of this new indictment were brought in derogation of the argument which had disposed of the Eastern District indictment. Following a hearing on January 16, 1975* the Hon. Charles Brieant denied the motion. The due process and double jeopardy issues which were raised in that motion are now sub judice before the United States Court of Appeals for the Second Circuit, Docket No. 75-1208**.

6. On September 16, 1975 a grand jury sitting in the Eastern District of New York returned two indictments, (75 Cr. 686 and 75 Cr. 687), both of which charged Alessi and Papa with conspiracy and substantive counts of violation of the federal narcotics laws. Alessi and Papa moved to dismiss both indictments on former jeopardy and denial of due process grounds. The gravamen of the due process claim was that these indictments were in direct contravention of the express terms of the plea bargain entered into by both defendants in 1972. On October 17, 1975 the Hon. Orrin Judd ruled that the conspiracies charged in indictment Nos. 75 Cr. 686 and 75 Cr. 687 were indistinguishable from the conspiracy to which Papa and Alessi pled. He then dismissed both indictments as violative of the double jeopardy and due process rights of both defendants.

---

*Set forth as "Exhibit C".

**Although deponent has not been privy to Judge Brieant's order, upon information and belief it was based on an issue not germane to this motion, i.e. that the United States Attorney for the Southern District is bound by plea bargains of the United States Attorney for the Eastern District. A similar motion is also pending before Judge Bonsal in the Southern District re: a narcotics indictment of Mr. Alessi. Neither Judge Brieant's denial nor any determination by Judge Bonsal will be dispositive of the issue here, i.e., whether the 1972 plea covered the tax aspects of the narcotics conspiracy.

7. The defendant Alessi was also indicted in the Southern District for conspiracy and substantive narcotics violations (75 Cr. 772). A motion for dismissal on double jeopardy and due process grounds is currently pending before the Hon. Dudley B. Bonsal, United States District Judge for the Southern District of New York.

8. The indictment at issue here (75 Cr. 295) charges Alessi with four counts of income tax evasion and four counts of failure to file for the years 1968, 1969, 1970 and 1971. This indictment is clearly violative of the 1972 plea agreement negotiated between Assistant U.S. Attorney James Druker and the defendants Alessi and Papa.

a) It must first be pointed out that although most of the on-the-record colloquies in this matter relate explicitly to Mr. Papa, everything that was said with regard to the plea and sentence arrangements was fully applicable and known to Mr. Alessi*; your deponent participated in these negotiations on behalf of both defendants (Mins. 1/16/75 at 32) and also participated in the plea and sentence proceedings of both men: it was, as Mr. Druker put it during the hearing before Judge Brieant, "a package deal" (Mins. of 1/16/75 at 35; see, also, Mins. 10/17/75 at 6 [per Judd, J.]); Judge Judd agreed that Mr Alessi's plea "was made in reliance on the same discussions that had been had with Mr. Druker" (Mins. 10/17/75 at 6); in further clarification of this Mr. Papa's counsel stated on behalf of M. . Alessi:

*To the extent, if any, that the record is unclear, it is respectfully suggested that this Court hold a testimonial hearing as did Judge Brieant, when he stated, "you can't determine contested facts on affidavits" (Mins. 1/16/75 at 27). See, e.g., United States v. Ciotti, 469 F2d 1204, 1207 (3d Cir. 1972); United States v. Carter, 454 F2d 426, 428 (4th Cir. 1972); United States v. Paiva, 294 F. Supp. 742, 743 (D.C., D.C., 1969).

> "There is one fact I believe all parties agree on, which seems, possibly through inadvertence, not to have clearly come through in the briefing of the issues, and I'll refer to this, your Honor: It's the parties' understanding that all persons who took dispositions in connection with 72 CR 473, which was the indictment that Mr. Papa pled to, including Mr. Alessi, who, of course, pled to a superseding information, received the full benefit of Mr. Druker's proposition with respect to possible future prosecutions--just the same way that Mr. Papa did.
>
> In short, Judge, Mr. Alessi's plea to the superseding information was in satisfaction of 72 CR 473, and we submit for the purpose of these motions, your Honor, that was identical to a plea to that indictment."
> (Mins. 10/17/75 at 1A - 2A)

b) Not only is it clear that the "Papa" plea negotiations were intended to cover Alessi, it is clear that the argeement was intended to bar precisely the kind of tax prosecution attempted here; Druker testified that he considered that his promise not to prosecute Papa on "any other piece of this conspiracy" required him to inform Papa of a pending tax investigation; Papa was, of course, permitted to plead to a hastily-drawn and then un-numbered information, demonstrating that the plea was a mere formality for closing the investigation out (Mins. of 9/5/72 at 36-40); the identity of the tax case and the narcotics conspiracy was made crystal clear by Mr. Druker when he advised the Court:

> "Your Honor, of course, the tax evasion is related to the other case insofar as the income and I would agree with counsel that as far as sentence is imposed, it should be concurrent." (Mins. 9/5/72 at 48) (emphasis added).

Although, it is not known to deponent when the investigation of Alessi arose that led to the present indictment, there can be no question that the facts which underlay the alleged evasion were known to all of the parties during the plea negotiations; Alessi had been charged in Count 5 of 72 Cr. 473 with managing a continuing criminal enterprise and obtaining "substantial income" therefrom during the years 1967-1971 (21 U.S.C. §848 (b)(2)[B]); it was a matter of government record that he had not filed any income tax returns during that period which, per se, raised a suspicion of income tax evasion; Assistant United States Attorney Thomas Puccio, who is in charge of this case, has specifically advised your deponent that the same witnesses who would have testified at the narcotics conspiracy will testify at this tax trial, and the period at issue here is the same period as the narcotics conspiracy.

9. In sum, it is clear that the plea negotiations with Papa also involved and were intended to cover Alessi, and that the agreement not to prosecute for any portion of the conspiracy included any tax matters.

WHEREFORE, it is respectfully requested that an order be entered dismissing indictment 72 Cr. 295.

Respectfully submitted

GINO E. GALLINA

Sworn to before me this
30th day of December, 1975.

Helen Bostello
Notary Public

DCT:RJD:lr
F.#751,518

A 18

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

VIRGIL ALESSI,

Defendant.

AFFIDAVIT IN OPPOSITION

75 CR 295

- - - - - - - - - - - - - - - - - X

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

JAMES O. DRUKER, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Eastern District of New York, duly appointed according to law and acting as such. This affidavit is submitted in opposition to the motion of the defendant VIRGIL ALESSI for an order dismissing the above-captioned indictment. Your deponent has read the affidavit of Gino E. Gallina dated December 30, 1975 and submitted in support of this motion as well as the accompanying exhibits.

With respect to the discussions and negotiations between your deponent and Messrs. Musoff, Gallina and Rosenberg on behalf of the defendant VIRGIL ALESSI, your deponent recalls the following facts:

In the spring of 1972, following the return in this District of indictment 72 CR 473 charging the defendant ALESSI, co-defendant Vincent Papa and others with conspiracy to violate Title 21, United States Code, Section 173, serious discussions were undertaken between the Government and counsel for the defendant Papa with respect to a possible disposition of the outstanding charges. Eventually, the defendant Papa expressed a willingness to plead guilty and face certain incarceration in return for the Government's agreement to dismiss the indictment with respect to certain defendants and to accept pleas to a count of the indictment in return for leniency with respect to the balance of the defendants. A tentative accord was reached whereby Papa was to plead guilty to one count of the indictment charging him with having participated in a conspiracy to import and sell heroin in violation of Title 21,

United States Code, Section 173.

Subsequently, however, the Government's case was substantially weakened by the escape of its principal witness, one Stanton Garland. This incident triggered renewed plea negotiations between your deponent and counsel for co-defendant Papa. Counsel for Papa immediately took the position that in view of Garland's disappearance, Papa no longer feared a conviction on the narcotics conspiracy case. Instead, counsel for Papa stated that he believed his client faced a more serious and immediate threat from a ongoing income tax investigation of which he was the subject taxpayer. Most importantly, counsel for the defendant Papa insisted that there could be no overall disposition of the narcotics conspiracy case unless Papa were also permitted to plead to both the narcotics conspiracy as well as a one-count Information charging him with tax evasion. Characterizing the disposition of the income tax charges as a "mere formality for closing the investigation", ignores the simple fact that the disposition of the tax case was, by the defendant Papa's terms, an essential ingredient to the overall disposition. (See affidavit of Gino E. Gallina, page 5).

As to the defendant VIRGIL ALESSI, he was promised only that his plea of guilty in the narcotics case protected him only against subsequent prosecution on that particular "conspiracy". ALESSI neither sought nor received any representations as to any potential criminal liability other than the charged narcotics violation. It should be noted that the defendant ALESSI was represented by the same counsel who successfully negotiated the above-described disposition on behalf of the co-defendant Vincent Papa.

WHEREFORE, your deponent respectfully prays that the motion of the defendant VIRGIL ALESSI be respectfully denied.

JAMES O. DRUKER
Assistant U.S. Attorney

Sworn to before me this
14 day of January 1976

OLGA S. MORGAN
Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1977

TO: Gino E. Gallina, Esq.
30 Broad Street
New York, New York 10004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 20

----------x

UNITED STATES OF AMERICA

- against -

VIRGIL ALESSI,

Defendant.

75 CR. 295

DEFENDANT'S AFFIDAVIT IN RESPONSE TO GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS

----------x

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney of record for the defendant VIRGIL ALESSI, and make this affidavit in response to the Government's Affidavit in Opposition.

2. On Page 2 of the Affidavit in Opposition it was stated that upon the disappearance of the Government's principal witness against Papa, counsel for Papa raised the issue of Papa's liability on an ongoing tax investigation. The thrust of this statement gives an erroneous impression that it was Papa's counsel who raised the issue of tax liability because of the disappearance of the Government witness. In point of fact, the issue of tax liability became the subject of negotiations between the prosecutor and defense counsel, as it was so obviously in this case as in all narcotics cases closely intertwined with the possible consequences of this type of conduct. In fact, it was the prosecutor who volunteered the information that there was a formal IRS investigation proceeding against Papa when the issue of liability was discussed, and it was only because the tax investigation had advanced so far in the IRS echelon that it was felt necessary to formally dispose of it with a tax information which was not the position that Mr. Alessi was in.

3. Defendant's position remains that because of the nature of the crime with which he was charged, and its relationship to tax liability his alleged close connection with Papa, and the close working relationship of the

I. R. S. and the various prosecuting agencies, the plea was intended to and did, encompass the charges in the pending indictment.

WHEREFORE it is requested that the motion be granted and the indictment dismissed.

GINO E. GALLINA
0 Broad Street
New York, New York 10004
212-944-1559

Sworn to before me this

19th day of January, 1976

Helen Costello

NOTARY PUBLIC

HELEN COSTELLO
Notary Public, State of New York
No. 24-4519127
Qualified in K[illegible]
Commission Expires [illegible], 1976

UNITED STATES DISTRICT COURT

A 22

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

(72 CR 473)
72 CR 1133

WILLIAM HUFF, GLENARD SPEARMAN, VIRGIL ALESSI, ANTHONY PASSERO, HENRY UVINO, SALLY PAIOLLIA, JOSEPH CESARIO, FRANK DiAMATTO, ROCCO EVANGELISTA, DANNY PANIERI, and JOHN DOE,

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 19 1974
TIME A.M.
P.M.

Defendants.

----------X

United States Courthouse
Westbury, New York

October 2, 1972
10:00 A.M.

B e f o r e :

HON: ANTHONY J. TRAVIA, U. S. D. J.

(PLEA AND SENTENCE OF VIRGIL ALESSI)

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

Official Court Reporter
U. S. District Court

Ex "B"

APPEARANCES: A. 23

ROBERT A. MORSE, U.S. ATTORNEY

BY: JAMES DRUKER, AUSA

LENEFSKY, GALLENA, MOSS & HOFFMAN, ESQS.
Attorneys for defendant
30 Broad Street, N.Y., N.Y. 10004
BY: GINO GALLINA, ESQ.

THE CLERK: Criminal cause for trial, U.S.A. v. William Huff, et. al.

THE COURT: This has to be docketed, as you know, with a new docket number.

All right. Mr. Druker, it is your turn.

MR. DRUKER: Your Honor, I believe we have an offer of a disposition from the defendant, Virgil Alessi as to a superceding information which we have just handed up to the Court.

MR. GALLINA: Your Honor --

THE COURT: Just a minute.

(pause)

THE COURT: Yes.

MR. GALLINA: Your Honor, the defendant, after consulting with me offers to withdraw his previously entered plea of not guilty --

THE COURT: There isn't a plea on this one. There is a case pending, 72 CR 473 and there's a number of other cases but it is my understanding, Mr. Druker, that you are handing up a superceding information.

MR. DRUKER: That is correct, your Honor.

MR. GALLINA: The defendant is going to waive indictment.

THE COURT: I will come to that in just a moment.

Mr. Alessi, did you receive a copy of this superceding information?

DEFENDANT ALESSI: Yes.

THE COURT: You have seen it?

DEFENDANT ALESSI: Yes.

THE COURT: You understand what it means?

DEFENDANT ALESSI: Yes.

THE COURT: You understand that a superceding information takes the place of an indictment and an indictment is a charge handed down by a Grand Jury after deliberation?

DEFENDANT ALESSI: Yes.

THE COURT: Do you understand that a superceding information is a charge made against you by the United States Attorney?

DEFENDANT ALESSI: Yes.

THE COURT: And do you understand that if you sign a waiver of indictment you waive the right to have your matter presented to a Grand Jury and agree to be proceeded against by way of superceding information, by way of the United States Attorney?

DEFENDANT ALESSI: Yes sir.

THE COURT: You know, the Grand Jury may or may not indict.

DEFENDANT ALESSI: Yes sir, I know that.

THE COURT: You are willing to waive that and be accused by the United States Attorney with a superceding information?

DEFENDANT ALESSI: Yes.

THE COURT: And it is your desire to sign a waiver of indictment in this case?

DEFENDANT ALESSI: Yes sir.

THE COURT: Sign it.

You witness it, counsel.

MR. GALLINA: Yes sir.

THE COURT: Is this zero to fifteen?

MR. DRUKER: Yes.

THE COURT: Plus a minimum of three years special parole.

Does he know that?

MR. DRUKER: Three years special parole.

THE COURT: Does he know that?

MR. GALLINA: Yes, we discussed it.

THE CLERK: The waiver has been signed and witnessed, your Honor.

THE COURT: Mr. Alessi, this is your signature,

and Mr. Gallina, this is your signature?

DEFENDANT ALESSI: Yes.

MR. GALLINA: Yes.

THE COURT: Received.

Now, Mr. Alessi, how do you plead on this superceding information?

DEFENDANT ALESSI: Guilty, your Honor.

THE COURT: Guilty.

DEFENDANT ALESSI: Yes.

THE COURT: How old are you?

DEFENDANT ALESSI: Forty.

THE COURT: Are you married?

DEFENDANT ALESSI: Yes.

THE COURT: Do you have any children?

DEFENDANT ALESSI: Yes sir.

THE COURT: How far did you go in school?

DEFENDANT ALESSI: Two years of high school, your Honor.

THE COURT: Have you been in a hospital for any reason in the last couple of years?

DEFENDANT ALESSI: Last week.

THE COURT: For what?

DEFENDANT ALESSI: Back injury.

THE COURT: When did you receive it?

DEFENDANT ALESSI: I have had it for about 15 years.

THE COURT: Were you ever in a mental institution?

DEFENDANT ALESSI: No sir.

THE COURT: There is no language barrier --

DEFENDANT ALESSI: No sir.

THE COURT: There is nothing in here you don't understand and you understand me; is that right?

DEFENDANT ALESSI: Yes sir.

THE COURT: Before considering your plea or accepting it you must be informed of the charge. Then, I will ask you questions.

Count 1 charges that: On or about between the first day of April, 1969, and the 18th day of September, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Virgil Alessi, Ike Williams, Edgar Leonard, Sally Ann Paiollia, Joseph Cesario, Jacqueline Gardner, Henry Uvino, Anthony Loria, Sr., William Huff, Anthony Loria, Jr., Ralph Loria and others wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together

and with each other to violate Sections 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code.

1. It was part of said conspiracy that on and after May 1, 1971 -- are you bringing this into the new statute, Mr. Druker?

MR. DRUKER: Yes, your Honor.

THE COURT: It was a part of said conspiracy that on and after May 1, 1971, the said defendants knowingly and intentionally would distribute and possess with intent to distribute and dispense a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code.

The overt acts charges that:

In pursuance of said conspiracy and to affect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere:

1. On or about the first day of June, 1971, in the Eastern District of New York, Stanton Garland and the defendant Virgil Alessi -- that's you -- had a conversation.

2. On or about the first day of August, 1971,

in the Eastern District of New York, Stanton Garland met with and had a conversation with the defendant Virgil Alessi -- and that's you.

3. On or about the 8th day of September, 1971, in the Eastern District of New York, Stanton Garland and the defendant Virgil Alessi met and had a conversation.

4. On July 8, 1971, the defendant Virgil Alessi possessed and delivered to Anthony Loria, Sr., approximately 35 ounces of heroin in the Eastern District of New York.

5. On or about and between May 1 and May 31, 1971, the defendant Henry Uvino purchased approximately 8 ounces of heroin from Anthony Loria, Sr.

6. On or about and between May 1, 1971, and May 31, 1971 the defendant Henry Uvino purchased approximately 2 ounces of heroin from Anthony Loria, Sr.

7. On or about January 15, 1969, the defendant Jacqueline Gardner received approximately 1/4 to 1/2 kilograms of heroin from Angelo Joseph Paradiso, in New York, New York.

8. On or about September 15, 1970, the defendant Edgar Leonard received approximately 1 kilogram

of heroin from Angelo Joseph Paradiso, in Bronx, New York.

9. On or about January 1, 1970, the defendant Sally Paiollia, in the Bronx, New York received approximately 1/8 kilograms of heroin from Angelo Joseph Paradiso.

Now, Mr. Alessi, you heard me read this superceding information and the count?

DEFENDANT ALESSI: Yes.

THE COURT: I am going to ask you, is it true, what is here in count 1; that between those dates, 1969 to 1971 you, with all those others named, that you heard me call out, wilfully, knowingly and unlawfully did combine, conspire and confederate together to violate those Sections of law?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: You met with them?

DEFENDANT ALESSI: With the people that I said I met with, like it says on there, yes, your Honor.

THE COURT: But in count 1 it also says -- Do you know Ike Williams?

DEFENDANT ALESSI: No.

THE COURT: Do you know Edgar Leonard?

DEFENDANT ALESSI: No.

THE COURT: Do you know Joseph Cesario?

DEFENDANT ALESSI: No.

THE COURT: Do you know Anthony Loria, Sr.?

DEFENDANT ALESSI: Yes.

THE COURT: Do you know Huff?

DEFENDANT ALESSI: No.

THE COURT: How about Loria Jr. and Ralph Loria?

DEFENDANT ALESSI: I met them.

THE COURT: You don't know the others?

DEFENDANT ALESSI: No.

THE COURT: You didn't know about their doing certain acts?

DEFENDANT ALESSI: I knew there was other people but I don't know their names.

THE COURT: But you knew there were others involved and you were part of it?

DEFENDANT ALESSI: Yes.

THE COURT: And you confederated and conspired with them through Loria?

DEFENDANT ALESSI: Yes.

THE COURT: So, you were part of the conspiracy to violate the narcotics laws?

DEFENDANT ALESSI: Yes sir.

THE COURT: You knew what you were doing?

DEFENDANT ALESSI: Yes.

THE COURT: Let's get down to the overt acts.

You told me that you didn't know Stanton Garland --

DEFENDANT ALESSI: I didn't say that.

THE COURT: You're right. I didn't mention him earlier.

You do know him and had a chat with him in June of 1971 and again in August, 1971?

DEFENDANT ALESSI: Yes.

THE COURT: In the Eastern District of New York?

DEFENDANT ALESSI: Yes.

THE COURT: In Brooklyn or Queens?

DEFENDANT ALESSI: Yes sir.

THE COURT: You had a conversation with him?

DEFENDANT ALESSI: Yes.

THE COURT: In these conversations you were not passing the time of day, were you?

DEFENDANT ALESSI: No.

THE COURT: You were making a date for the illicit transfer of drugs; right?

DEFENDANT ALESSI: Right.

THE COURT: On September 8, 1971, you met with Stanton Garland?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: And then on July 8 of 1971 you had and delivered to Anthony Loria, Sr., approximately 35 ounces of heroin?

DEFENDANT ALESSI: Yes.

THE COURT: Do you use drugs yourself?

DEFENDANT ALESSI: No sir.

THE COURT: Now, in your talks with Loria did you know that he gave Uvino or sold Uvino drugs?

DEFENDANT ALESSI: No.

THE COURT: But you knew Loria was selling drugs?

DEFENDANT ALESSI: Yes.

THE COURT: And the same thing about Jacqueline Gardner?

DEFENDANT ALESSI: Yes.

THE COURT: Did you know Paradiso?

DEFENDANT ALESSI: I met him.

THE COURT: He was part of this?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Did you know that he sold Jacqueline Gardner --

DEFENDANT ALESSI: No sir --

THE COURT: (continuing) Heroin?

DEFENDANT ALESSI: No sir.

THE COURT: But you knew he was dealing with heroin; right?

THE DEFENDANT: Yes sir.

THE COURT: And do you know that on September 15, 1970, this fellow, Paradiso, sold heroin to Edgar Leonard?

DEFENDANT ALESSI: I don't know it.

THE COURT: But you knew Paradiso was dealing in heroin, did you not? I ask you that again.

DEFENDANT ALESSI: Yes sir.

THE COURT: And the defendant, Sally Paiollia, received heroin in the Bronx from Paradiso -- you didn't know the actual date but you knew he was dealing in it?

DEFENDANT ALESSI: Yes sir.

THE COURT: There is no question in your mind about your involvement in this conspiracy to violate those laws dealing with heroin; right?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you understand what this says?

DEFENDANT ALESSI: Yes sir.

THE COURT: This is an information.

DEFENDANT ALESSI: Yes sir.

THE COURT: And you are willing to waive, as you told me, and you did sign a waiver of indictment and are willing to be proceeded against by way of this superceding information?

DEFENDANT ALESSI: Yes sir.

THE COURT: Did you talk it over with your lawyer, Mr. Gallina?

DEFENDANT ALESSI: Yes.

THE COURT: He told you what you are in for if you plead guilty, didn't he?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you talked to him about this case and after discussing it, he advised you to plead guilty here?

DEFENDANT ALESSI: Yes.

THE COURT: And you are satisfied with his advice?

DEFENDANT ALESSI: Yes sir.

THE COURT: After talking to him you figure you haven't much of a chance in a trial; is that right?

DEFENDANT ALESSI: Yes sir.

THE COURT: So, you know what you are doing and you are satisfied with his advice?

DEFENDANT ALESSI: Yes.

THE COURT: Is he your retained attorney, not Court appointed?

DEFENDANT ALESSI: Yes, he is retained.

THE COURT: Do you understand that if you go to trial and do not waive indictment you have the right to a speedy and public trial by an impartial jury?

DEFENDANT ALESSI: Yes.

THE COURT: And that you would have the right, if you went to trial, to compulsory process to obtain witnesses in your behalf and be confronted by witnesses against you?

DEFENDANT ALESSI: I have heard it, yes sir.

THE COURT: Do you further understand that if you plead guilty to the superceding information the Court has the power to and may impose a prison sentence of up to 15 years?

DEFENDANT ALESSI: Yes sir.

THE COURT: What is the fine on this -- twenty-five thousand dollars?

MR. DRUKER: I think it is twenty-five

thousand dollars.

THE COURT: And do you understand that you are subject to a fine of up to twenty-five thousand dollars?

DEFENDANT ALESSI: Yes sir.

THE COURT: Or both?

DEFENDANT ALESSI: Yes sir.

THE COURT: You know that?

DEFENDANT ALESSI: Yes sir.

THE COURT: And if there is a prison sentence imposed here the Court must add on to whatever the sentence may be a special period of parole for a minimum of three years? Do you understand that?

DEFENDANT ALESSI: Yes sir.

THE COURT: After hearing your rights you still desire to plead guilty?

DEFENDANT ALESSI: Yes sir.

THE COURT: Has anyone made any promises of any kind or inducements of any kind to you for your plea of guilty?

DEFENDANT ALESSI: No sir.

THE COURT: This plea of guilty is being made by you voluntarily?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you are pleading guilty because you in fact did commit each and every act as charged in this superceding information to which you are pleading guilty?

DEFENDANT ALESSI: Yes.

THE COURT: Is there anything that you misunderstood or would like me to repeat?

DEFENDANT ALESSI: No sir. I understood everything.

THE COURT: You made a lot of admissions to me.

DEFENDANT ALESSI: I know, sir.

THE COURT: It appears that has been the usual conversation between you and your client. Is there anything that may cause you to think that I should not accept the plea of guilty from your defendant?

MR. GALLINA: Absolutely not.

THE COURT: Doyou represent to this Court that I should accept this plea of guilty from your client?

MR. GALLINA: Yes sir.

THE COURT: Mr. Druker?

MR. DRUKER: I know of no reason not to

accept the plea, your Honor.

THE COURT: On the basis of the colloquy between the Court and the defendant and upon the representations of counsel for both sides the Court believes there is a reasonable basis of fact to accept this plea and accepts the plea of guilty to the superceding information which is a one count information.

Bail.

Mr. Druker -- bail?

MR. DRUKER: I would ask that the same bail be continued.

MR. GALLINA: Your Honor --

THE COURT: He is on bail in 473.

MR. GALLINA: Correct.

I would ask that in view of the conversations I have had with Mr. Druker that the ordinary procedures be waived and the defendant be allowed to waive his probation report and be sentenced today.

THE COURT: You want that?

MR. DRUKER: Yes.

THE COURT: You had better sit down and talk to him a while.

(Recess taken)

(After Recess)

THE COURT: What do you have, Mr. Druker?

MR. DRUKER: The Alessi sentencing at this time.

THE COURT: Mr. Gallina, you indicated earlier that the defendant wished to waive a pre-sentence report and wished to be sentenced immediately; is that correct?

MR. GALLINA: Correct.

THE COURT: Have you told Mr. Alessi what that means?

MR. GALLINA: Yes.

THE COURT: He understands that he is permitted to have this matter adjourned until I receive the report?

MR. GALLINA: I explained it to him.

DEFENDANT ALESSI: I understand, yes sir.

THE COURT: You understand that and you are willing to waive the pre-sentence report and be sentenced now?

DEFENDANT ALESSI: Yes.

THE COURT: Okay, Mr. Alessi.

First of all, Mr. Gallina, would you make that in the form of a motion?

A 42

MR. GALLINA: Yes.

I would move at this time that the probation report ordinarily issued in cases such as these be foregone andthat your Honor sentence the defendant today.

THE COURT: Any objection?

MR. DRUKER: No objection, your Honor.

THE COURT: Motion granted.

You are Virgil Alessi, the defendant named in this superceding information?

DEFENDANT ALESSI: I am, your Honor.

THE COURT: Mr. Gallina, standing to your left, is your retained attorney?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Do you want him to appear for you at this sentencing?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Is there any reason why judgment should not now be pronounced against Virgil Alessi?

MR. GALLINA: No, your Honor.

DEFENDANT ALESSI: No, your Honor.

THE COURT: Do you have any comments to make with respect to the terms or conditions of sentence?

MR. GALLINA: I do not. I believe that your

Honor is sufficiently familiar with the indictment and I do believe --

THE COURT: Mr. Gallina, my opinion of this case amounts to what I heard in this morning's colloquies and colloquies from other defendants I cannot impune to your client.

MR. GALLINA: May I approach the bench?

THE COURT: No sir. On the record--unless you want to come up here and say it side bar on the record.

If it is just that you don't want the rest of the courtroom to hear what you have to say, that's all right. As long as it is on the record I don't care.

(Side bar discussion)

MR. GALLINA: I understand there is a piece of information he wishes to disclose to the Court. I don't think it should even be in a sealed record, let alone this record.

MR. DRUKER: Your Honor --.

THE COURT: First of all, I'm going to ask with respect to this man's previous record --

MR. GALLINA: I don't believe he has one.

THE COURT: I'm going to ask.

MR. DRUKER: I think he had a ten day gambling sentence about 15 years ago.

THE COURT: Mr. Gallina, is there anything else you wish to say?

MR. GALLINA: No, your Honor.

(Conclusion of side bar discussion)

(Following held in open court)

THE COURT: Mr. Gallina, is there anything else you wish to say?

MR. GALLINA: No.

THE COURT: Mr. Alessi, you are the defendant, Virgil Alessi.

DEFENDANT ALESSI: Yes sir.

THE COURT: I am asking the same question I asked before -- is there any reason for judgment not to be pronounced upon you at this time?

DEFENDANT ALESSI: No.

THE COURT: Do you have anything to say other than what your lawyer said which you heard -- he just told the Court that I know about the case --

DEFENDANT ALESSI: Right, your Honor.

THE COURT: Is there anything you wish to say at this time?

DEFENDANT ALESSI: No.

THE COURT: Mr. Druker, let me hear from you.

MR. DRUKER: Your Honor, I do -- in all candor and this isn't easy -- originally, this wasn't the world's strongest case. Basically, it was a conspiracy. The defendants were aware from the beginning what the case was about.

The most prominent government witness escaped --

THE COURT: Any chance of finding him?

MR. DRUKER: Just about nil.

THE COURT: Because if so I will adjourn this.

MR. DRUKER: He is out of custody since June. We came close to getting him and then lost him. We are unable to locate him through his attorney.

Now, as to Mr. Alessi, to me, the case is a weak one. We discussed it with the Bureau of Narcotics and Dangerous Drugs and that is the Government's opinion.

However, if the Court will so impose a sentence whereby if he does deal again in narcotics we would have a hook on him -- if he does, we could get him then.

He is willing to plead guilty and to give up the possibility, the good possibility that at a trial he --

THE COURT: Provided I accept the recommendation. If I don't accept your recommendation, then what? He'll be looking for an out on his plea.

MR. DRUKER: I can't speak for him.

THE COURT: It is apparent because apparently there were discussions in that regard. There is no sense denying it. It is as open and shut as could be.

MR. DRUKER: I won't deny it.

THE COURT: Don't you come here again on a case like this again. If you can win it, win it. If you cannot win it you should lose it. If you cannot win it they are entitled to be not guilty but I am not taking any more such recommendations.

If they don't win it they have to take their chances on sentence and I don't mind telling you that I would give him 15 years without batting an eye.

MR. DRUKER: Do you want me to make a recommendation?

THE COURT: You are easing yourself into

that position.

You are going to take theblame.

MR. DRUKER: Your Honor, I've got to be realistic.

We think that a suspended sentence and probation for three years and I can assure your Honor --

THE COURT: If he comes back before me he would come back as a second offender. Does he know what that term would be?

MR. GALLINA: Each sentence is doubled. He understands that.

THE COURT: Go ahead, Mr. Druker.

You are asking that I give him an s/s.

MR. DRUKER: That's what I am asking for, your Honor. In this particular case, as lenient as it may seem, it satisfies the ends of justice, in my opinion.

THE COURT: Well, this will give more food for thought, so to speak with all the newspapers bandying articles about concerning the leniency of certain judges.

I am hoping they don't consider me one of them after this and I want you to take the blame

for it. But in the future, beware.

On your plea of guilty to the indictment, rather, the superceding information -- we don't have a file number -- which was handed up today, I am going to, rather than suspend sentence, I am going to suspend the execution of sentence -- do you know what that means, Mr. Gallina?

MR. GALLINA: That's a substantial difference, your Honor.

THE COURT: And I will place him on probation for five years and if he gets in trouble -- beware.

As I say, five years probation.

MR. GALLINA: Your Honor, in our discussions with the Government -- and I understand your Honor's predicament --

THE COURT: I'm not in any predicament. I'm as free as a bird.

MR. GALLINA: Well, your Honor, the Government has put your Honor in a position where your Honor has strong feelings about this kind of crime --

THE COURT: Not necessarily this kind of shenanigans.

MR. GALLINA: However, pursuant to all we discussed it was our understanding that the

Government would recommend a five year suspended sentence with probation for three years.

THE COURT: Keep it up. I am learning more.

That was your discussions with the Government, Mr. Gallina? Is that correct, Mr. Druker?

MR. DRUKER: (nodding affirmatively)

MR. GALLINA: If your Honor would consider --

THE COURT: What is the difference between five or fifteen on an s/s? You will take the 15 on an s/s.

MR. GALLINA: No difference.

THE COURT: That's good enough for me.

You know, I'm not going to have a John's Bargain Store here. Either you understand me or you don't. If not, withdraw the plea and if you did, you'd do me a favor.

MR. GALLINA: If he violates the probation he comes back before you and he would be liable --

THE COURT: For the whole 15.

Then again, he'd come back as a second offender and get 25.

MR. GALLINA: I believe that a five year suspended sentence and three years probation --

THE COURT: Not today. I'm not in the mood. The answer is no.

The sentence here is adjourned.

MR. GALLINA: Your Honor --

THE COURT: I withdraw the sentence I imposed. I vacate the sentence and put this off for some other time. Suit yourselves.

MR. DRUKER: May we have a moment?

THE COURT: You can have all day.

Are there any others here?

MR. DRUKER: Your Honor, I think Alessi will be it for today.

THE COURT: I've got to cross all these names off.

MR. DRUKER: Your Honor, there may be dispositions and with regard to Mr. Uvino we are waiting for papers on a Rule 20 from Newark.

THE COURT: You handed up another one.

MR. DRUKER: I think we have 6.

This includes all the remaining defendants and I was going to ask if we might not keep that open and we will close out the other case accordingly.

THE COURT: Yes, I want to do that.

Who else is going to plead?

MR. DRUKER: I think there will be dispositions with regard to Uvino, Paiollia. With regard to Williams, Leonard and Gardner -- with regard to Gardner, no disposition. With regard to Leonard, no disposition.

Therefore, the information handed up is against Alessi and Cesario.

(Recess taken)

(After Recess)

THE COURT: Let the record stand up to whether I asked him before pronouncing sentence -- no, I want it expunged -- no, better leave it and I will change it. I made certain statements and I want them to stand. I will just have to sound a little repetitious.

May the record indicate that I will vacate the sentence imposed -- I think I already sentenced him two different ways -- both are to be vacated after the discussions that we have had thus far and the recommendations made by Mr. Druker.

Therefore, Mr. Alessi, on your plea of guilty to the superceding information you are comitted to the custody of the Attorney General or his duly authorized representative who shall

designate the place of confinement for a term of five years plus three years special parole.

The execution of that sentence is suspended and I place you on probation for five years.

MR. GALLINA: Three years.

THE COURT: Five years, three years special parole. Same thing.

Now, which ones do you want to dismiss? We have several cases.

First, 72 CR 88.

MR. DRUKER: The Government moves to dismiss that.

THE COURT: Indictment dismissed.

MR. DRUKER: And we would move similarly with regard to 72 CR 473.

THE COURT: Dismissed as to this defendant.

MR. DRUKER: Also, 433, your Honor.

THE COURT: What number?

MR. DRUKER: 433, your Honor. That was an indictment that was superceded by 473.

THE COURT: 433 -- 72 Cr 433. Dismissed as to this defendant.

MR. DRUKER: Thank you, your Honor.

* * * *

A 53

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA, :

- against - :

VINCENT PAPA and VIRGIL ALESSI, et al, : 72 CR 473

Defendants. :

- - - - - - - - - - - - - - - - - X

United States Courthouse
Westbury, New York

September 5, 1972

B e f o r e :

HONORABLE ANTHONY J. TRAVIA,
U. S. D J.

ANTHONY MANCUSO
COURT REPORTER

Exhibit - A -

Appearances:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: JAMES O. DRUKER, ESQ.,
Special Assistant United States Attorney

THEODORE ROSENBERG, ESQ.,
GINO GALLINA, ESQ.,
Attorneys for Defendant Papa

FRANK A. LOPEZ, ESQ.,
Attorney for Defendant Alessi

* * *

THE COURT: United States of America versus Vincent Papa, et al. 72-CR-473.

MR. DRUKER: That's correct.

THE COURT: There is also another case on the calendar with the same number. Well, that must be part of it.

MR. GALLINA: That's all under 72-CR-473. That's a superseding indictment.

MR. DRUKER: There is also to be a disposition to an information that will follow the narcotics case.

MR. ROSENBERG: If your Honor please, on the 72-CR-473, defendant wishes to withdraw his plea of not guilty heretofore entered and wishes to plead guilty to count one to cover the entire indictment. And also under the information, your Honor.

MR. GALLINA: And also under the information which the defendant waives indictment.

THE COURT: That's a new one.

MR. GALLINA: I believe the information number is --

THE COURT: It doesn't have a number yet. If it's just being handed up, it doesn't have a number. Is he also pleading to the information?

MR. GALLINA: That's correct, your Honor, under count four to cover all counts of the indictment.

THE COURT: This is not a superseding information, is it?

MR. DRUKER: No, it isn't.

THE COURT: Well, let's take the 473 first. Is Mr. Papa here?

MR. ROSENBERG: Yes, your Honor.

THE COURT: Are you Mr. Papa, Vincent Papa?

DEFENDANT PAPA: Yes, sir.

MR. GALLINA: Your Honor, may I make it known to the Court, we have in view of the fact it's a lengthy indictment, we have read the indictment to the defendant. We have gone over the facts.

THE COURT: Before you come to that, I want to pull out the indictment first. He is pleading guilty to count one. It's a three page count one.

MR. GALLINA: That's correct, your Honor.

THE COURT: Are you trying to obviate the necessity of reading it, which is my requirement under the plea?

MR. GALLINA: I am not certain.

THE COURT: And the overt acts, we can go to

the ones where he is specifically named, if he is.

MR.GALLINA: Just count one and four, your Honor.

MR. DRUKER: One and five. I think it would have to be count one.

THE COURT: In the overt acts?

MR. GALLINA: That's correct. He is only mentioned in count one.

THE COURT: Where in count one?

MR. GALLINA: Count one he is mentioned as to fifth defendant.

THE COURT: Are we looking at the superseding indictment?

MR. GALLINA: That's correct.

THE COURT: Well, that's the count, but how about the overt acts? Is he mentioned in any of the overt acts?

MR. GALLINA: Overt acts, ten and nine; overt acts, 20 and 21, your Honor and overt -- That's it. Nine, ten, twenty and twenty-one.

THE COURT: Is that it. Nine, ten, twenty and twenty-one.

MR. GALLINA : That's correct. The counts he is mentioned in are nine, ten, twenty and twenty-one.

your Honor.

THE COURT: The overt acts.

MR. GALLINA: That's correct, count one and overt acts nine, ten, twenty, and twenty-one.

THE COURT: I am going to read the count completely and skip the overt acts that he is not involved in, so what is your request.

MR. GALLINA: I am sorry, the assistant was speaking to me.

THE COURT: You were making a request.

MR. GALLINA: I was going to mention to your Honor, that the defendant is fully aware of all the counts. He has read all the matters in the indictment. I don't believe it is necessary for him to be made aware of the overt acts besides those in which he is individually sited.

THE COURT: Well, we will read count one in its entirety, except those overt acts which he is not involved in. Does this meet with your approval as counsel?

MR. GALLINA: Yes, sir.

THE COURT: Your approval also, Mr. Papa?

DEFENDANT PAPA: Yes, sir.

THE COURT: You understand what he is saying?

DEFENDANT PAPA: Yes, sir.

THE COURT: Mr. Papa, you are one of the defendants named in the superseding indictment obtained in 72-CR-473.

DEFENDANT PAPA: Yes, sir.

THE COURT: You have just heard your lawyer Mr. Rosenberg saying that you wish to withdraw your plea of not guilty and plead guilty to count one of that indictment. Is that your full understanding, your knowledge and your consent?

DEFENDANT PAPA: Yes, sir.

THE COURT: You know what you are doing after advice of counsel and with advice of counsel.

DEFENDANT PAPA: Yes, sir.

THE COURT: You are fully familiar with what you are doing?

DEFENDANT PAPA: Yes, sir.

THE COURT: You have discussed that with them?

DEFENDANT PAPA: Yes, sir..

THE COURT: They have told you what the possibilities of punishment are here?

DEFENDANT PAPA: Yes, sir.

THE COURT: Is your lawyer Court appointed?

DEFENDANT PAPA: No, retained.

THE COURT: He is your own retained attorney?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, before accepting your plea or considering your plea, you must be informed of the charge against you and I am going to read the charge contained in count one and with your understanding, I'll read the entire count one. But only read those overt acts contained in count one that mention your name and that is with your understanding.

DEFENDANT PAPA: Yes, sir.

THE COURT: You have read the entire count and you have read all of the overt acts?

DEFENDANT PAPA: Yes, I did.

THE COURT: Count one in the superseding indictment reads as follows: "On or about and between the first day of April, 1967, and the 18th day of December 1971, both dates being approximate and inclusive within the Eastern District of New York, the defendants, Anthony Loria, Sr., William Huff, Nino Fazio, Leonard Spearman also known as "Mojo", Danny Loria, Vincent Papa," and that's you.

DEFENDANT PAPA: Yes, sir.

THE COURT: "Virgil Alessi, Salvatore Graziano, Anthony Loria, Ike Williams, Edgar Leonard,

Anthony Passaro, Henry Uvino, Joseph Cesario also known as "Joe Dirt", Ralph Loria, Jack DiAmatto, Jacqueline Gardner, John Doe, being a white male being known also as Nick Fasano and others to the Grand Jury unknown, wilfully, unlawfully and knowingly, did combine, conspire confederate and agree together and each other to violate--". Now: there was an amendment made in that sentence, "to violate prior to May 1, 1971--". Is that correct?

MR. DRUKER: To violate prior to May, 1971 and then after May, 1971 it was sections that they conspired to violate.

THE COURT: Okay. "-- to violate prior to May 1, 1971, section 173 and 174 of the Title 21 of the United States Code and after May 1, 1971 to violate sections 812, 841(a) (1), 841 (b) (1), 959 (a) (1) and 952 of Title 21 of the United States Code."

That May 1 date prior to May 1, 1971, it was under 173 and 174, the old narcotics laws and after May 1, 1971 that was repealed and a new one went in with the 841's; you understand that?

DEFENDANT PAPA: Yes.

THE COURT: So you know what that is.

and agree

MR. GALLINA: Yes, your Honor, he understands that and it's been explained to him and it's been discussed with the Assistant United States Attorney, Mr. Druker, that his plea would be under this count in view of the fact that they site both sections of law. His plea would be under sections 841 rather than 174 because of certain mandatory provisions under 174.

THE COURT: Except that part of this conspiracy is prior to May 1, 1971, and how do you waive or get rid of the provisions of the sentencing under 173 and 174?

MR. GALLINA: He is pleading to that count as having committed the overt act number 20, which is an act after the first of May, 1971.

THE COURT: Well, doesn't the conspiracy also discuss a conspiracy to conspire etc and agree to do certain things in violation of 173 and 174?

MR. ROSENBERG: Yes, it does, but we are only pleading to what took place after.

MR. GALLINA: We are pleading to one section of the law.

THE COURT: He is telling me now that he is

not guilty in 173 and 174.

MR. GALLINA: That's correct, his understanding as part of the plea is he plead to section 841 to cover the whole indictment

THE COURT: Is that all right with you, Mr. Druker?

MR. DRUKER: That's satisfactory to the government, your Honor.

THE COURT: All right.

"1. It was part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would conceive, conceal, buy, sell, and facilitate the transportation and to wit heroin, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drug had been imported and brought into the United States in violation of sections 173 and 174 of the Title 21 of the United States Code."

"2. It was further a part of the said conspiracy that on and after May 1, 1971, the said defendants knowingly and would necessarily direct and would possess with intent to distribute and dispense a schedule one narcotic controlled drug substance, the exact amount thereof being to the Grand

Jury unknown in violation of sections 812, 841 (a)(1) and 841B(1)(a) of Title 21 of the United States Code."

And then it gives a list of 24 other overt acts. And these overt acts each of which charge certain things that were done by certain of the defendants and overt act number nine which involved you, Mr. Papa reads as follows:

"On or about January 5, 1969, the defendant Vincent Papa delivered approximately one kilogram of heroin to the defendant Anthony Loria, Sr., in the Eastern District of New York." Mr. Druker, that's 1969.

MR. DRUKER: Yes, your Honor, I think what Mr. Papa is saying that he is admitting having conspired and he is admitting having done overt act number 20, your Honor. I don't believe he is admitting with regard to overt act nine or the other.

MR. GALLINA: Ten, or ten.

THE COURT: Well, how do you plead guilty to a count if you take pieces of a count out?

MR. GALLINA: Your Honor, I think the difficulty was in the articulation of the count. They put in two sections of law.

THE COURT: That specifically says he de-

livered a kilogram of heroin on that day, which is 1969. Did he or didn't he do it?

MR. ROSENBERG: Your Honor, what we are admitting to is under count 20: that's 1971.

THE COURT: But what are you trying to do here, forget about what happened prior to 1971?

MR. ROSENBERG: Your Honor, we are only admitting a certain part of our guilt.

MR. GALLINA: The charge here is a continuing conspiracy, in fact he can only be punished and charged under one section of law.

THE COURT: I would pick 173 if I were sentencing.

MR. GALLINA: I understand.

THE COURT: It's true I could only sentence him under one and I would choose the initial one.

MR. GALLINA: Your Honor, the conversation that we had with the Assistant United States Attorney is he would be able to plead under section 841.

THE COURT: On these things, Mr. Druker, I think the next thing that you better do is get a superseding information or a superseding indictment. Well, anyway, number ten says that, "On or about February 9, 1969, the defendant Vincent Papa

and Anthony Passero delivered to Anthony Loria, Sr., in Eastern District of New York, delivered heroin to --".

That too is prior to 1971; right?

MR. GALLINA: That's correct, your Honor.

THE COURT: But I want to hear it from the defendant.

MR. ROSENBERG: Well, your Honor --

THE COURT: I know.

MR. ROSENBERG: -- the defendant has indicated that the extent of his guilt to which he is ready to plead guilty is under overt act twenty.

THE COURT: Okay.

"Number twenty - On or about the first day of June 1971, in the Eastern District of New York, Stanton Garland and the defendant Danny Ranieri and Vincent Papa, " and that's you, "had a conversation."

DEFENDANT PAPA: Yes, sir

THE COURT: "Number twenty-one - That on or about the first day of August 1971, within the Eastern District of New York, Stanton Garland met with and had a conversation with defendants Danny Ranieri and Rocco Evangelista." Did he?

DEFENDANT PAPA: Yes.

THE COURT: Now, Mr Papa, tell me something about, you know all these defendants that I mentioned the names of.

DEFENDANT PAPA: Yes.

THE COURT: All of them that I mentioned?

MR. DRUKER: Your Honor, he doesn't know every one personally.

THE COURT: Do you know Anthony Loria, Sr.?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you know William Huff?

DEFENDANT PAPA: No, sir.

THE COURT: Do you know Nino Fazio?

DEFENDANT PAPA: No, sir.

THE COURT: Do you know Leonard Sperman also known as "Mojo"?

DEFENDANT PAPA: No, sir.

THE COURT: Do you know Danny Loria?

DEFENDANT PAPA: Yes, sir

THE COURT: Do you know Vincent Papa yourself, you sure do, I guess. Virgil Alessi?

DEFENDANT PAPA: Yes, sir

THE COURT: Paula Silvestri?

DEFENDANT PAPA: Yes, sir.

THE COURT: Salvatore Graziano?

DEFENDANT PAPA: No, sir

THE COURT: Anthony Loria?

DEFENDANT PAPA: No.

THE COURT: Ike Williams?

DEFENDANT PAPA: No, sir.

THE COURT: Edgar Leonard?

DEFENDANT PAPA: No, sir.

THE COURT: Anthony Passero?

DEFENDANT PAPA: Yes, sir

THE COURT: Henry Uvino?

DEFENDANT PAPA: No, sir.

THE COURT: Sally Paiollia?

DEFENDANT PAPA: No, sir.

THE COURT: Joseph Cesario also known as "Joe Dirt"?

DEFENDANT PAPA: No, sir

THE COURT: Ralph Loria?

DEFENDANT PAPA: No, sir.

THE COURT: Frank DiAmatto?

DEFENDANT PAPA: Yes, sir

THE COURT: Jacqueline Gardner?

DEFENDANT PAPA: No, sir.

THE COURT: Nick Fasano?

DEFENDANT PAPA: No, sir.

THE COURT: Rocco Evangelista?

DEFENDANT PAPA: Yes, sir.

THE COURT: And Danny Ranieri?

DEFENDANT PAPA: Yes, sir.

THE COURT: Well, you with the ones that you say you know, you tell me, know that you conspired, made a conspiracy to violate certain laws.

DEFENDANT PAPA: Yes, sir.

THE COURT: In other words you got together with these others and you combined and conspired and agreed together to violate certain sections of the narcotics laws?

DEFENDANT PAPA: Yes, sir.

THE COURT: And you are telling me now that you were involved in the act after May, 1971, not before?

DEFENDANT PAPA: Yes, sir.

THE COURT: But you did combine a conspiracy with these other named defendants?

DEFENDANT PAPA: Yes, sir.

THE COURT: And your alleged conspiracy or combination of your confederates and your agreement was to deal in heroin, right?

DEFENDANT PAPA: Yes, sir.

THE COURT: And according to the overt acts that I read to you, particularly one of twenty and twenty-one, you had conversations with certain people, right?

DEFENDANT PAPA: Yes, sir.

THE COURT: And those conversations were with respect to either sale or delivery or doing something with heroin, right?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, you understand that you have a right to a speedy and public trial by an impartial jury.

DEFENDANT PAPA: Yes, sir

THE COURT: And do you further understand that if you should go to trial that you would have the right to compulsory process to obtain witnesses in your behalf.

DEFENDANT PAPA: Yes, sir.

THE COURT: And the right to be confronted by witnesses against you.

DEFENDANT PAPA: Yes, sir.

THE COURT: And do you further understand that if you plead guilty in this cause, the Court

has the power and may sentence you. What's the maximum on 841?

MR. DRUKER: Fifteen.

THE COURT: And no minimum. From zero to fifteen and then there is a three years minimum, special period of parole, isn't there?

MR. DRUKER: Yes, sir.

THE COURT: Does that meet with your understanding?

DEFENDANT:PAPA: Yes, sir.

THE COURT: Counsel, do you have that section with you?

MR. DRUKER: No, I don't have it with me, your Honor.

THE COURT: Are you going to get it, Mr. Lazarus, please. I know there is a special period of parole and I think the minimum is three years.

MR. ROSENBERG: I don't think it's a mandatory sentence.

THE COURT: Zero to fifteen.

MR. ROSENBERG: I am aware of -- in addition to the parole.

THE COURT: Any period of jail, whatever it may be, there will be a three year special period

of parole in addition That's the way I read that section. Now you better look at it -- Mr. Lazarus going out to get it -- and satisfy yourself.

Am I right?

MR. DRUKER: Special parole of at least three years.

THE COURT: If there is a penalty. I mean a jail sentence. I think it's a zero to fifteen, they just took out the mandatory minimums.

MR. GALLINA: It's 841(I) (a). Your Honor may read it.

THE COURT: I a it would be.

MR. GALLINA: Case of controlled sentence to schedule one or two, which is narcotic drug, such person be sentenced to imprisonment of not more than fifteen years or $25,000 find or both.

THE COURT: Yes, go ahead.

MR. GALLINA: If any person commits such a violation after one or more prior convictions --

THE COURT: No, I am not talking about that, beyond that.

MR. DRUKER: Any sentence imposing a term of imprisonment under this paragraph, shall in the absence of such, shall read section --

THE COURT: There you are.

MR. ROSENBERG: May we approach the bench?

THE COURT: Yes.

(Discussion held off the record.)

THE COURT: Mr. Reporter, we will stop right there for now and we will continue it in a while. Give them a chance to talk to their defendant.

(Case recalled)

MR. ROSENBERG: We are taking a plea under 174. Do you want to expunge the record.

THE COURT: Yes, we will expunge the record and start all over again.

MR. ROSENBERG: Shall we wait for the United States Attorney?

THE COURT: Yes, we will wait for him. First before we start, expunge the record, insofar as anything that has transpired up until now.

MR. ROSENBERG: The defendant wishes to withdraw his plea of not guilty heretofore entered and wishes to plead guilty under count one to cover the entire indictment.

THE COURT: We will start all over again on this. Mr Papa?

DEFENDANT PAPA: Yes.

THE COURT: You are Vincent Papa, one of the defendants named in this superseding indictment obtained in 72 CR-473?

DEFENDANT PAPA: Yes, sir.

THE COURT: Your attorney, Mr Rosenberg and Mr. Gallina have indicated to the Court that you wish to withdraw your plea of not guilty and to plead guilty to count one. Is that your understanding?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand what you are doing?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg and Mr Gallina are your retained counsel.

DEFENDANT PAPA: Yes, sir.

THE COURT: You discussed this matter with them.

DEFENDANT PAPA: Yes, sir.

THE COURT: They have advised you of the nature of this case?

DEFENDANT PAPA: Yes, sir.

THE COURT: And the nature of your plea.

DEFENDANT PAPA: Yes, sir.

THE COURT: The extent of your involvement in this.

DEFENDANT PAPA: Yes, sir.

THE COURT: Also the extent of punishment that could be meted out.

DEFENDANT PAPA: Yes, sir.

THE COURT: On that basis and their advice that they have given you as your attorneys, you are going to plead guilty to count one in satisfaction of the entire indictment.

DEFENDANT PAPA: Yes, sir.

THE COURT: Other than the promise that they made with regard to the other counts in this indictment, were there any other promises made to you?

DEFENDANT PAPA: No, sir.

THE COURT: How old are you, Mr. Papa?

DEFENDANT PAPA: 54.

THE COURT: Have you ever been in a hospital for any reason?

DEFENDANT PAPA: No, sir.

THE COURT: Recently?

DEFENDANT PAPA: No, sir.

THE COURT: Were you, yourself, ever involved

24

in the use of drugs?

DEFENDANT PAPA: No, sir.

THE COURT: Before considering your plea or accepting your plea, the Court must read the charges against you, so I am going to read count one, please listen.

How far did you go in school?

DEFENDANT PAPA: Second term high school

THE COURT: So, you have no difficulty in language here?

DEFENDANT PAPA: Not really.

THE COURT: Do you understand me?

DEFENDANT PAPA: Very few words I don't understand, sir.

THE COURT: You read this indictment in its entirety and you know it all?

DEFENDANT PAPA: Yes, sir.

THE COURT: Count one reads as follows:

"On or about and between the first day of April 1967 and the 18th day of December, 1971, both dates being approximate and inclusive within the Eastern District of New York, the defendants Anthony Loria, Sr., William Huff, Nino Fazio, Leonard Spearman also known as "Mojo", Danny Loria, Vincent Papa", and that'

you, "Virgil Alessi, Salvatore Graziano, Anthony Loria, Ike Williams, Edgar Leonard, Henry Uvino, Sally Paiollia, Joseph Cesario, also known as "Joe Dirt", Ralph Loria, Frank DiAmatto, John Doe being a white male being known also as Nick Fasano and Rocco Evangelista and Danny Ranieri and others to the Grand Jury unknown, wilfully and unlawfully did conspire and combine and confederate with each other to violate prior to May 1, 1971, section 173 and 174 Title 21 of the United States Code and on and after May 1, 1971, to violate section 812, 841(a)(1), 841B(1)(a), 951(a)(1) and 952, of Title 21 of the United States Code."

"1. It was part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would conceive, conceal, buy, sell and facilitate the transportation concealment and sale of a quantity of narcotic drugs to wit, heroin, the exact amount thereof being to the Grand Jury unknown after said narcotic drugs had been imported into the United States in violation of section 173 and 174 of the Title 21 of the United States Code."

"2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants

knowingly and intentionally would distribute and possess with intent to distribute and dispense a schedule one narcotic drug controlled substance, the exact amount therefore being to the Grand Jury unknown, in violation of section 812, 841(a)(1), 841B(1)(a), of Title 21 of the United States Code."

Then it goes on to list 24 overt acts. Now, I am going to read those overt acts that refer to you. However, in doing so, it's my understanding and if I am incorrect, please say so, Mr. Rosenberg, Mr. Papa, and Mr. Gallina. That I will skip those overt acts in which he is not mentioned, only because it has been consented by you three that I skip those overt acts, but they are part of the overt acts obtained in count one of this indictment.

MR. ROSENBERG: That's correct.

THE COURT: It's merely to save the time of the overt acts.

MR. ROSENBERG: Yes, your Honor.

THE COURT: I will read the overt acts, which he is involved namely nine, ten, twenty and twenty-one. Do you understand that, Mr. Papa?

DEFENDANT PAPA: Yes, sir.

THE COURT: You read the others?

DEFENDANT PAPA: Yes, sir.

THE COURT: Number nine, "On or about January 5th, 1969, the defendant, Vincent Papa", that's you, "delivered approximately one kilogram of heroin to the defendant, Anthony Loria, Sr., in the Eastern District of New York." Did you do that?

DEFENDANT PAPA: Yes, sir.

MR. ROSENBERG: Yes, sir.

THE COURT: Number ten, "On or about February 9th, 1969, the defendants Vincent Papa and Anthony Passero delivered heroin to Anthony Loria, Sr., in the Eastern District of New York." Did you do that?

DEFENDANT PAPA: Yes, sir.

THE COURT: It doesn't say what the amount is but you gave him some heroin; right?

DEFENDANT PAPA: Yes, sir.

THE COURT: You and Passero did that?

MR. ROSENBERG: Well, the defendant admits that he is doing it, Judge.

THE COURT: It says here that he and Passero. Did he with Passero?

DEFENDANT PAPA: Yes, sir.

THE COURT: Number twenty, "On or about the first day of June, 1971 in the Eastern District of

New York, Stanton Garland and the defendant Danny Ranieri and Virgil Alessi had had conversation."

DEFENDANT PAPA: Yes, sir.

THE COURT: Twenty- one, "On or about the first day of August 1971 in the Eastern District of New York, Stanton Garland met with and had conversation with the defendant Danny Ranieri and Rocco Evangelista and Vincent Papa and Virgil Alessi." Is that correct?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, in the main part of the count, count one, you know a number of those defendants that I mentioned. Right?

DEFENDANT PAPA: Yes, sir

THE COURT: You certainly know Passero, Ranieri, Alessi and Evangelista. Right?

DEFENDANT PAPA: Yes, sir.

THE COURT: Among others.

DEFENDANT PAPA: Yes, sir.

THE COURT: And among all of those that you mentioned you know, plus these others that you know. youdid combine to conspire?

DEFENDANT PAPA: Yes, sir

THE COURT: -- you wilfully and unlawfully

and knowingly combined, conspired, confederated and agreed together and with each other to violate certain sections of the law that [redacted] had to do with narcotics; right?

DEFENDANT PAPA: Yes, sir.

THE COURT: In other words, you got together in a conspiracy to do certain things about heroin; right?

DEFENDANT PAPA: Yes, sir.

THE COURT: No doubt about that?

DEFENDANT PAPA: No, sir.

THE COURT: Now, do you understand that you have a right to a speedy and a public trial by a impartial jury?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand further, that if you should go to trial that you would have a right to the compulsory process to obtain witnesses in your own behalf.

DEFENDANT PAPA: Yes, sir.

THE COURT: And to be confronted by witnesses against you.

DEFENDANT PAPA: Yes, sir

THE COURT: Do you further understand, that

if you should plead guilty to count one of this indictment, the Court has the power to and may sentence you as follows. Now in the part that has to do with violation of section 173 and 174, your lawyer has explained to you, if it's between the penalty under 173 and 174 and under the 841 statute.

DEFENDANT PAPA: They did.

THE COURT: The 173 and 174, you understand that occurred prior to May 1, 1971.

DEFENDANT PAPA: Yes, sir.

THE COURT: Those two overt acts that I read to you, nine and twenty particularly had to do with acts which occurred on January 5, 1969 and February 9th, 1969, right?

DEFENDANT PAPA: Yes, sir.

THE COURT: So that those acts come within the pervue of 173 and 174.

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand this?

DEFENDANT PAPA: Yes, sir.

THE COURT: This had been explained to you?

DEFENDANT PAPA: Yes, sir.

THE COURT: With regard to 173 and 174, the

the Court has the power to and may sentence you to prison for a period of not less than 5 years. Is it 5 rather than 20?

MR. DRUKER: Yes, your Honor.

THE COURT: For a period of not less than five years and not more than twenty years, plus a fine of up to $25,000 or both.

DEFENDANT PAPA: Yes, sir.

THE COURT: You know that?

DEFENDANT PAPA: Yes, sir.

THE COURT: And do you know too that under that penalty you are not eligible for probation or parole. Do you understand that?

DEFENDANT PAPA: Yes, sir.

THE COURT: And that, for the part of the crime which occurred after May 1, 1971, which is part of that same count, the Court has the power to and may sentence you to a term of not more than 15 years. In other words, no mandatory minimum, a period of not more than 15 years, from zero to 15, plus a fine of $25,000 or both, plus the fact that the Court may also sentence you to a term of a period of special parole of not less than three years.

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand that?

DEFENDANT PAPA: I do.

THE COURT: Now, the Court has two ranges of punishment here under 173 and 174 and under the 841 and other sections involved; do you understand that?

DEFENDANT PAPA: Yes, sir.

THE COURT: You heard me give you maximum on both.

DEFENDANT PAPA: Yes, sir.

THE COURT: The Court may at the time of the sentence choose either one.

DEFENDANT PAPA: Yes, sir.

THE COURT: After hearing your rights, do you still desire to plead guilty?

DEFENDANT PAPA: Yes, sir.

THE COURT: Has anyone made any promise or threats of any kind to induce you to plead guilty?

DEFENDANT PAPA: No, sir.

THE COURT: Other than the promise that this one count would be in satisfaction of any other count involved in this indictment.

DEFENDANT PAPA: Yes, sir

THE COURT: Plus the fact that the United States Attorney may have some recommendations to make.

MR. ROSENBERG: As to the information.

THE COURT: We will come to that. That's another one.

MR. ROSENBERG: Before we had expunged the record, at this time the defendant will waive indictment under United States Section 7201 and 7203.

* *

(con't. on next page.)

THE COURT: I want to finish with this one first. There has been no promise or threats of any kind to induce you to plead guilty?

DEFENDANT PAPA: No, sir.

THE COURT: Is this plea being made voluntary on your part?

DEFENDANT PAPA: Yes, sir.

THE COURT: After discussions with your lawyers.

DEFENDANT PAPA: Yes, sir.

THE COURT: And are you making this plea because you in fact did commit every act that count one of this indictment contained in 72-CR-473 alleges you committed.

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg, is there any reason why this Court should not accept this plea on this indictment?

MR. ROSENBERG: No, your Honor.

THE COURT: Mr. Gallina?

MR. GALLINA: No, your Honor.

THE COURT: Mr. Druker?

MR. DRUKER: No, your Honor.

THE COURT: On the basis of colloquy between

this court and this defendant and upon the admissions made to this court on the overt acts obtained in the count and upon the count itself and upon the representations made by the counsel for the defendant and for the the United States Attorney's Office, the Court is of the opinion that this is a basis in fact for accepting the plea to count one and on such finding accept the plea of guilty to count one of the superseding indictment obtained in file number 72-CR-473.

MR. ROSENBERG: We want to waive probation report and have this court impose sentence today .

THE COURT: Okay. Now Mr. Papa, your lawyer just said that you want to waive a probation report.

DEFENDANT PAPA: Yes, sir.

THE COURT: You have a right to do that.

DEFENDANT PAPA: Yes, sir

THE COURT: But the Court would also want you to know that you have a right to wait an investigation and presentence report which the Court would ordinarily get before sentencing you. At which time the Court would inquire into all the information obtained in the presentence report and I would adjourn the sentence at this time until such time if that's

what you desire.

DEFENDANT PAPA: No, sir.

THE COURT: You waive that right and desire to be sentenced immediately?

DEFENDANT PAPA: Yes, sir.

THE COURT: You discussed that with your lawyer?

DEFENDANT PAPA: Yes, sir.

THE COURT: Mr. Rosenberg, do you make it in the form of a motion?

MR. ROSENBERG: Yes, I do.

THE COURT: You move to waive the presentence report and are prepared for sentence at this time?

MR. ROSENBERG: Yes, your Honor

Your Honor, there is another problem also, defendant has another charge pending against him and would like to waive indictment under that charge and plead guilty to count four of the information.

THE COURT: It's not an indictment. In other words, Mr. Druker, you are now handing up an information.

MR. DRUKER: I am, your Honor.

THE COURT: We don't have a CR number on it yet. A four count information under Title 26 of the

United States Code section 7201 and 3. And information which obtains four counts against this defendant Vincent Papa. Is Vincent C. Papa and Vincent Papa one and the same person?

DEFENDANT PAPA: Yes, sir.

MR. ROSENBERG: The defendant would offer to plead guilty to count four to cover the entire information.

THE COURT: Is he at this time waiving indictment?

MR. ROSENBERG: Yes, he is.

THE COURT: Mr. Papa, the United States Attorney has just handed up to this Court a four count information charging you with violations of Title 26 of the United States Code, section 7201 and 7203. Have you had an opportunity to see this information?

DEFENDANT PAPA: Yes, sir.

THE COURT: And you know the contents of it?

DEFENDANT PAPA: Yes, sir

THE COURT: Do you understand what it means to waive indictment?

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand that in signing

this waiver of indictment you waive the right to have this matter presented to a Grand Jury.

DEFENDANT PAPA: Yes, sir.

THE COURT: And that you are willing to let the government proceed against you on an information which it files against you, which it's doing now.

DEFENDANT PAPA: Yes, sir.

THE COURT: You know too, if it is presented to the Grand Jury, it may or may not indict?

DEFENDANT PAPA: I understand that, sir.

THE COURT: You are willing to take that chance and waive indictment at this time and plead on the information as it is presented?

DEFENDANT PAPA: Yes, sir.

THE COURT: With this understanding, is it still your desire to sign the waiver of indictment?

DEFENDANT PAPA: Yes, sir.

THE COURT: Okay, sign it.

THE CLERK: It is being signed and witnessed.

THE COURT: Signed by Mr. Papa and signed by the deputy counsel and Mr. Rosenberg signed as counsel.

THE COURT: Okay. The Court receives them and files them. Now, we have before us this infor-

A [redacted] 39

mation. Mr. Papa, how do you plead?

DEFENDANT PAPA: Guilty, sir.

THE COURT: To what?

MR. ROSENBERG: Count four.

THE COURT: To count four?

DEFENDANT PAPA: Yes, sir.

MR. GALLINA: To cover all counts in the information.

THE COURT: Again, before we accept your plea or consider your plea, the Court must inform you of the charge against you and I am going to read count four.

(Count four read.)

THE COURT: Do you understand what I read to you, Mr. Papa?

DEFENDANT PAPA: Yes, sir

THE COURT: Did you and your wife file this return saying that you had earned $34,000 and that you owed $10,000 plus, when in fact it was $40,000 and you owed $12,000 or more.

DEFENDANT PAPA: Yes, sir.

THE COURT: That you knew that when you filed this return?

DEFENDANT PAPA: Yes, sir.

THE COURT: And that it was a false and fraudulent return.

DEFENDANT PAPA: Yes, sir.

THE COURT: Do you understand that you have a right to a speedy and public trial by an impartial jury.

DEFENDANT PAPA: Yes, sir.

THE COURT: And do you understand that if you should go to trial, that you would have the right to compulsory process to obtain witnesses in your own behalf.

DEFENDANT PAPA: Yes, sir.

THE COURT: And that you would have the right to be confronted by witnesses against you.

DEFENDANT PAPA: Yes, sir.

THE COURT: What is the penalty under 271?

MR. DRUKER: Five years and $10,000 fine.

THE COURT: Do you further understand that if you plead guilty to count four of this information, the Court has the power to and may sentence you to a term of imprisonment of up to five years and a fine in the sum of up to $10,000 or both.

DEFENDANT PAPA: Yes, sir.

THE COURT: After hearing your rights, do you

still desire to plead guilty?

DEFENDANT PAPA: Yes, sir

THE COURT: Has anyone made any promise or threats of any kind to induce you to plead guilty to count four of this indictment?

DEFENDANT PAPA: No, sir.

THE COURT: Is this plea being made voluntarily on your part?

DEFENDANT PAPA: Yes, sir.

THE COURT: Are you making this plea of guilty because you in fact did commit every act that count four of this information alleges you committed?

DEFENDANT PAPA: Yes, sir.

THE COURT: Mr. Rosenberg, is there any reason why the Court should not accept the plea of guilty to count four?

MR. ROSENBERG: No, sir.

THE COURT: You have discussed this with the defendant, Mr. Druker?

MR. DRUKER: I can think of no reason why the Court should not accept the plea.

THE COURT: On the basis of the colloquy between the Court and this defendant, and his admis-

sion to this count four, the Court is of the opinion that there is a reasonable basis, in fact, for accepting the plea of guilty and so find and on such finding accepts the plea of guilty to count four of this information.

MR. ROSENBERG: We will waive the probation report with respect to this charge also, Judge?

THE COURT: Now, Mr. Papa, is it your desire to waive the probation report here too?

DEFENDANT PAPA: Yes, sir.

THE COURT: And as I told you on the other, you have a right to delay sentence here until such time as a probation report is received by the court.

DEFENDANT PAPA: I understand that, sir.

THE COURT: You are willing to waive that and be sentenced at this time?

DEFENDANT PAPA: Yes, sir.

MR. ROSENBERG: Defendant is ready for sentence and there is no legal cause why sentence shouldn't be imposed at this time.

THE COURT: Okay.

Let's take the first one, 473, 72-CR-473 Mr. Vincent Papa, you are one of the defendants named in a superseding indictment contained to file number

72-CR 473.

DEFENDANT PAPA: Yes, sir.

THE COURT: And the gentlemen standing to both sides of you are your retained counsel, Mr. Rosenberg and Mr. Gallina?

DEFENDANT PAPA: Yes, sir.

THE COURT: And do you wish them to be your lawyers at this sentencing?

DEFENDANT PAPA: Yes, your Honor.

THE COURT: Now, who shall talk, Mr. Rosenberg or Mr. Gallina?

MR. ROSENBERG: Your Honor, I'll rest entirely upon, - -

THE COURT: Who is going to talk for him?

MR. ROSENBERG: I will.

THE COURT: Is there any reason why judgement should not be pronounced against Mr. Papa?

MR. ROSENBERG: No, sir.

THE COURT: Do you have any comment in respect as to what sentence should be?

MR. ROSENBERG: I'll rest upon the government, they are familiar with all the facts and circumstances. They are familiar with the defendant's background. I'll rest upon their integrity.

THE COURT: Mr. Papa, is there any reason why sentence should not be pronounced against you?

DEFENDANT PAPA: No, sir.

THE COURT: Do you have any comment to make in addition to what your lawyer has said?

DEFENDANT PAPA: No, sir.

THE COURT: Now, Mr. Druker?

MR. DRUKER: The only thing I can say here, that this is a serious crime of course, one of the most serious, but counsel for both sides have been open with one another. In their pretrial discussion in this case, Mr. -- he was not caught in possession of any heroin, one of the witnesses against Mr. Papa has escaped federal custody and knowing this and being aware of this, he has chosen to plead guilty and take his chances.

I would recommend whatever leniency the court can render, at least knowing he had a fair shot of beating this on a trial and he is willing to plead guilty and take his medicine.

THE COURT: Well, with regard to this indictment, I will not sentence pursuant to section 841, etc. I am going to sentence in accordance with 173 and 174. Particularly since two overt acts in-

volvad here both allegedly refer to dates, in 1969, which is prior to the repeal of 173 and 174. And the penalty under 173 and 174 in my judgement is more severe and in view of the nature of this crime, I believe the more severe penalty ought to be imposed here. I understand from what you say Mr. Druker, that this defendant had been cooperative and your admission at this time that the case against this defendant isn't so very good, I shall take those things into consideration. All right.

Mr. Vincent Papa, on your plea of guilty to [redacted] count one, I think it is, yes count one, of the indictment of the superseding indictment contained in file number 72-CR-473, you are committed to custody of the Attorney General of the United States or his duly authorized representative who shall designate the place of confinement for a term of five years. You understand that under the penalty provisions which I told you earlier, about, you are not eligible under that section for any probation or parole.

DEFENDANT PAPA: I understand that, sir.

MR. ROSENBERG: With respect to the information, Judge, would you want to impose the sentence

on that.

THE COURT: On the next here the information.

MR. DRUKER: Your Honor, in consideration of the Court's sentence on that, I would move to dismiss the remaining count against Mr. Papa in 72-CR-473.

THE COURT: All right. All counts, other than count one in which this defendant is accused the counts are dismissed.

MR. DRUKER: Also, 72-CR-88, that's the indictment that was superseded by this, I would move to dismiss this entire indictment.

THE COURT: 72-CR-88 is dismissed against this defendant.

MR. DRUKER: Thank you

THE COURT: Now on this information which you have waived presentence report, right?

DEFENDANT PAPA: Yes, sir.

THE COURT: Okay. Now, is there any reason Mr. -- first of all, let me ask, this information that alleges you as Vincent C Papa.

DEFENDANT PAPA: Yes, sir

THE COURT: Is that you?

DEFENDANT PAPA: Yes.

THE COURT: The same as Vincent Papa in this other case.

DEFENDANT PAPA: Yes, sir.

THE COURT: All right. And you are the defendant named in this information and which you pleaded guilty to count four?

DEFENDANT PAPA: Yes, sir.

THE COURT: And the attorneys to both your right and left are your own retained attorneys?

DEFENDANT PAPA: Yes, sir.

THE COURT: And you want them to appear for you at this sentencing?

DEFENDANT PAPA: Yes, sir.

THE COURT: Now, Mr. Rosenberg, is there any reason why judgement should not be pronounced against Mr. Vincent C. Papa?

MR. ROSENBERG: No legal cause why sentence shouldn't be imposed.

THE COURT: Do you have any comments with respect to what the sentence should be.

MR. ROSENBERG: I would merely request that any sentence that this Court would impose would be concurrent with the previous sentence, and in view of the statements made by the government, they didn't

have too much of a case to begin with and defendant has a five year sentence and I ask that this be concurrent.

THE COURT: Mr. Papa, is there any reason why judgement should not now be pronounced against you?

DEFENDANT PAPA: No, sir.

THE COURT: Do you have any comments with respect to the sentence should be and terms and conditions, anything to what your lawyer stated?

DEFENDANT PAPA: No, sir.

MR. DRUKER: Your Honor, of course, the tax evasion is related to the other case insofar as the income and I would agree with counsel that as far as sentence is imposed, it should be concurrent.

THE COURT: Okay. Mr. Papa, on your plea of guilty to count four of the information which we have before us, which will be given a number, very soon, you are committed to the custody of the attorney general of the United States or his duly authorized representative who shall designate the place of confinement, for five years. Said sentence shall be concurrent to the sentence imposed on the previous case in 72 CR-473.

DEFENDANT PAPA: Thank you, your Honor.

MR. ROSENBERG: I have one further application that the imposition of sentence would commence October 2nd.

THE COURT: I would come to that in a minute.

MR. DRUKER: I was just going to ask that the Court dismiss count1,2,3 of the informatinn.

THE COURT: Count 1 , 2 and 3 in the information before the court are dismissed. The sentence imposed in this case shall run concurrent with the case of 72-CR-473.

MR. ROSENBERG: The execution of sentence starts as of October 2nd, Judge.

THE COURT: October 2nd.

MR. DRUKER: Mr. Rosenberg asked me about this earlier and in fairness to Mr. Papa, he has been here for every court appearance. I believe that he originally surrendered on these charges. He has known what he faced and I submit that he is not a bail risk.

I have no objection.

THE COURT: All right. Execution of the sentence is stayed until October 2nd, at 3:00 p.m. when Mr. Papa shall surrender to the United States Marshall's office at the Brooklyn office. You

know where that is, Mr. Papa?

DEFENDANT PAPA: Yes, sir.

THE COURT: 3:00 on October 2nd, you surrender. Therefore commencement of your sentence imposed today

DEFENDANT PAPA: Thank you, your Honor

MR. DRUKER: Your Honor, the marshalls have asked me on occasion if it would be possible on occasion to make these at 10:00 a.m.

THE COURT: Do you have any objection?

MR. ROSENBERG: I'll work it out with the marshall.

THE COURT: You work it out any way you like. Bail continued. What's the bail on this one.

MR. DRUKER: On Mr. Papa, he is on $50,000 surety bond, your Honor.

THE COURT: Bail continued

MR. DRUKER: No objection.

* * *

THE COURT: Good afternoon.

MR. LOPEZ: Mr. Gallina and myself are filing a notice of appearance on behalf of Virgil

Alessi who is before the court.

THE COURT: Are you Mr. Alessi?

DEFENDANT ALESSI: Yes, I am.

MR. GALLINA: Your Honor --

THE COURT: Supposing we have Mr. Druker hand up something first.

MR. GALLINA: Yes, your Honor.

MR. DRUKER: Do you have the waiver.

THE COURT: Mr. Druker handed up a superseding information naming Nino Fazio and Virgil Alessi with violations of Title 21 of the United States Code, section 841 (a) (1) and 841B (1)(a), which is a one count information, conspiracy count with five overt acts, right?

MR. DRUKER: That is correct.

THE COURT: Mr. Lopez and Mr. Gallina, you both have seen this information?

MR. LOPEZ: Yes, we are reading it now.

THE COURT: You better take time and read it to your defendant.

MR. GALLINA: May we have five minutes to spend some time with it?

THE COURT: Yes, you may.

MR. DRUKER: Thank you.

A [redacted] 52

(Five minute recess to read information.)

MR. GALLINA: Your Honor, we have examined the superseding and it appears that for the record purpose of the plea that we anticipated today, the Assistant, Mr. Druker and myself, Mr. Lopez have agreed that there are certain defects which would have to be corrected and it would not be possible to do that today and therefore we beg your indulgence and ask you to put this over to October 2nd.

MR. DRUKER: Nothing that affects the dispositio

THE COURT: Virgil Alessi will be crossed out and your handing up as against one defendant Nino Fazio.

MR. DRUKER: Yes, your Honor.

THE COURT: Well, put it on for October 2nd.

MR. LOPEZ: Yes, Judge

MR. DRUKER: Judge, I think there are going to be some more dispositions in this case. I wonder if we might adjourn this for a short time and wewill drafted some superseding informations.

THE COURT: Okay.

MR. GALLINA: For those defendants that are not going to have their case disposed of today, could we humbly suggest to the court that October 2nd might be a date to which the government would consent

and to which we would desire.

THE COURT: Well, at that date I may not promise you a trial. But we will put it down for that date to set a date. That's the whole of 473.

* * *

Certified to be true and correct transcript of proceedings.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

vs. : 74 Cr. 1082

VINCENT PAPA, SR., et al., :

Defendants. :

- x

January 16,1975,
11 A.M.

Before:

Hon. Charles L. Brieant, Jr.,
District Judge.

Appearances:

PAUL J. CURRAN, ESQ.,
United States Attorney for the Southern District of New York,
John P. Cooney, Jr., Esq.,
Daniel Beller, Esq.,
Assistant U.S. Attorneys.

IVAN FISHER, ESQ.,
Attorney for defendant Papa, S.

NANCY ROSNER, ESQ.,
Attorney for defendant Stanzione.

FRANK A. LOPEZ, ESQ.,
Attorney for defendant Papa, Jr.

THEODORE ROSENBERG, ESQ.,
Attorney for defendant Euphemia.

Exhibit - C -

rgh 2

THE CLERK: United States of America v. Vincent Papa.

MR. COONEY: The government is ready.

MR. FISHER: The defendant is ready.

THE COURT: Those of you who represent co-defendants, if you wish to sit at the counsel table you may do so.

I think before we start this matter that you note their presence, please.

I might mention I filed a memorandum and order this morning denying the suppression motion by defendant Stanzione and anyone who wants a copy of that can apply to the court.

Mr. Laifer is not here, is he?

MR. ROSENBERG: No, your Honor.

THE COURT: I am in the process of having typed my findings and conclusions denying the motion to suppress the so-called million dollars. That will definitely be available for you by Monday morning and perhaps even earlier.

The fact finding I am making in this matter may be slightly different than Judge Duffy's decision, which I have now read, however we both come out to the same bottom line. You ought to all be apprised of that so that you can guide yourself accordingly in your proceedings.

If you will check with me before we break I may

be able to bring you up to date on any other matters that may remain open which are important to you for your pre-trial considerations.

All right, let's get started with the witness.

MR. FISHER: If your Honor please, with regard to the due process aspects of the double jeopardy due process motions --

THE COURT: That is your October motion.

MR. FISHER: Yes, your Honor.

As I understand the position of the court we are not entitled to a hearing on the double jeopardy branch of those motions pre-trial.

THE COURT: I am prepared to discuss that with you. I think you perhaps state my position a little more starkly than is realistic and I am prepared to take that up with you in an informal conference if it is helpful to you.

MR. FISHER: Thank you, your Honor.

THE COURT: I want to take the use of this time, if possible, to take the proof on your second half of your October 21st motion -- is that the date of it?

MR. FISHER: Yes, your Honor.

THE COURT: I understood that Mr. Druker was going to come here and testify as to that.

MR. FISHER: Mr. Druker will be available at 2 o'clock, your Honor, but at this time the defendant Papa calls Wallace Musoff.

THE COURT: This is on the second half of the October 21st motion?

MR. FISHER: Yes, your Honor.

W A L L A C E M U S O F F, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Musoff, how are you presently employed?

A I am an attorney. I am a member of the firm of Wagman Cannon & Musoff at 136 East 37th Street, New York City.

Q How long have you been so employed, sir?

A Well, I have been associated in that office since December of 1969 and we formed our professional corporation approximately a year ago.

Q Prior to your employment and association with that firm, sir, how were you employed?

A I was the senior trial attorney in the Tax Court Division of the office of the chief counsel and prior to that I was a special agent with the Intelligence Division of the

Internal Revenue Service.

Q Did there come a time, sir, when you came to represent the defendant Vincent Papa?

A Yes.

Q Was that in connection with a tax investigation being conducted against him in the Eastern District of New York?

A Yes, sir.

Q Did there come a time when you had a conversation with James O. Druker in regard to that investigation?

A Yes.

Q Who else was present?

A Theodore Rosenberg, another attorney that had been retained by Vincent Papa.

Q Do you recall approximately the date of this conversation?

A My diary indicates that it was August 18, 1972.

Q Where was this conversation had, Mr. Musoff?

A At Mr. Druker's office.

Q Please relate to us the substance, or if you can recall the words in that conversation, indicating who said what to whom.

A I believe I started the conversation by stating that I had been retained by Mr. Papa as tax counsel; that it

was related to me that Mr. Rosenberg had been engaged in discussions with Mr. Druker concerning the disposition of all pending cases that Mr. Druker was in charge of and that--

Q Excuse me, when you say pending cases do you mean cases pending or pending cases against Mr. Vincent Papa?

MR. BELLER: Your Honor--

THE COURT: Sustained.

Q Did Mr. Druker indicate a defendant with regard to pending cases?

A Vincent Papa.

Q Continue, please.

A Mr. Rosenberg had said that --

MR. BELLER: Your Honor, as to what the witness knew from Mr. Rosenberg the government would object to hearsay testimony.

THE COURT: You are not giving us a conversation you had in the presence of Mr. Druker, is that right?

THE WITNESS: Yes. This is the conversation. This is what I am saying to Mr. Druker. I was explaining the background as to why I had requested the meeting with Mr. Druker at that time.

THE COURT: Why don't you let the witness start at the beginning of his discussions with Mr. Druker and give us the substance of what he said to Mr. Druker, what

Mr. Rosenberg said in his presence and Mr. Druker's presence and what Mr. Druker said.

MR. FISHER: Yes, your Honor.

THE COURT: Why don't you start at the beginning again.

A I explained to Mr. Druker that I had been retained as tax counsel by Mr. Papa; that I had requested the meeting with Mr. Druker because Mr. Rosenberg hadn't related that in his prior discussions with Mr. Druker that Mr.Druker wanted to recommend -- somebody in the Internal Revenue Service insisted that Mr. Druker recommend a five-year sentence upon a disposition of all pending cases against Mr. Papa by means of his plea. I stated that I never heard of this procedure; that it seemed to be unusual for somebody in the Internal Revenue Service to dictate to the U.S. Attorney's office the type of sentence that should be recommended and that I wanted the opportunity to converse with that Internal Revenue Service employee.

Mr. Druker stated that the information was incorrectly relayed to me; that it was Mr. Druker's feeling that a five-year sentence should be recommended and nobody in the Internal Revenue Service had recommended this to him.

I said so that there would be no other misunderstandin Mr. Rosenberg had also relayed the fact that if Mr. Papa

were to plead to the -- to an income tax violation and the contemplated narcotics violation, would that resolve all pending cases against him, because if it didn't then he wouldn't be in a position to adequately defend himself against future charges once he was incarcerated.

Mr. Druker stated that he knew of no other pending cases except those in the Eastern District and that if Mr. Papa were to plead that it would dispose ofall pending cases against him.

Then he gave an illustration. As I recall it Mr. Druker stated that if anybody who was connected with any of the pending cases against Mr. Papa were to come forward with additional information which could form the basis for an additional charge against him he would not pursue that information to prosecute Mr. Papa, but if that somebody who was then unknown to him were to come to him, say somebody who said that Mr. Papa was involved with the hijacking of wrist watches or something of that nature, then he would feel free to prosecute him.

THE COURT: He mentioned wrist watches?

THE WITNESS: I believe he did, your Honor.

THE COURT: You may continue.

Q Was anything else said with regard to bargaining or the disposition of the cases pending against Mr. Papa

in the Eastern District at that meeting, sir?

MR. BELLER: Your Honor, I believe the witness has already answered.

THE COURT: I am not certain he did, Mr. Beller.

Have you give us the entire conversation on that day?

THE WITNESS: In substance, yes.

MR. FISHER: I have no further questions.

THE COURT: You may cross-examine.

b2

CROSS-EXAMINATION

BY MR. BELLER:

Q When were you retained, Mr. Musoff, by Mr. Papa in connection with this tax proceeding?

A I was retained in approximately July of 1972.

Q What were the circumstances that led up to your being retained?

A The circumstances were that there were a pending income tax investigation being conducted by the Intelligence Division in Brooklyn in coordination with the U.S. Attorney's office, that Mr. Fahringer had been retained I believe to handle that aspect and that I was to render technical assistance to him in connection with that investigation.

THE COURT: Was this an audit of returns that we are talking about or was this arising out of the million

dollars so-called?

THE WITNESS: To my knowledge it was not arising out of the million dollars. It was an independent -- I don't know what the genesis of the case was, your Honor. It was an investigation by the criminal branch of the Internal Revenue Service, which is the Intelligence Division.

THE COURT: With respect to a particular return, though?

THE WITNESS: With respect to a number of years.

Q Are you aware how Mr. Papa or Mr. Fahringer became aware of the investigation?

MR. FISHER: Objection, if your Honor please. Irrelevant.

THE COURT: It may or may not be relevant. I will take it subject to connection.

MR. FISHER: Also calling for--

THE COURT: He can answer it yes or if he is aware.

A I am unaware.

Q Pardon me?

A I am not aware.

Q Your specialty is tax matters, is that correct?

A That's correct.

Q Now, you went to discuss the information you had

received from Mr. Rosenberg with Mr. Druker on August 18th, is that correct?

A That's correct.

Q That was because you were particularly interested in this information with respect to an IRS agent who had made recommendations of sentence, is that correct?

A That's correct.

Q And it was the IRS practice that seemed to be unusual to you at that time, is that correct?

A That's correct.

Q All this was with respect to the tax case, is that correct?

A Pardon me?

Q All of your concern was with the tax case, is that correct?

A Primarily, yes.

Q Did you have expertise in any other matters?

A No, I did not.

Q Were you involved in any other investigations involving Mr. Papa?

A No, I was not.

Q So your concern was with the tax case exclusively, was it not?

A That is correct.

Q Had you been a party to any plea negotiations prior to your meeting with Mr. Druker on August 18th?

A I was not.

Q But you were aware, were you not, that there had been plea negotiations prior to your meeting with Mr. Druker?

A Yes, sir.

Q In fact you were aware that there had been plea negotiations on behalf of Mr. Papa with Mr. Druker prior to your even being retained in the case, were you not?

A No, I am not aware of that.

Q You were concerned with possible misunderstandings between Mr. Druker and Mr. Rosenberg, is that correct?

A That is correct.

Q Your concern at that meeting with Mr. Druker was with the tax investigation with which you were exclusively concerned, was it not?

A Initially it was but then I shifted over because I felt it was important for Mr. Papa, if he were to entertain rendering a plea of guilty that he be aware of all the facts and that they be accurately represented to him. In other words, if there was a misunderstanding with respect to the tax case I wanted to make sure that there wouldn't be a similar misunderstanding with respect to the other information

Mr. Rosenberg had imparted to me.

Q Mr. Rosenberg was present at the meeting with Mr. Druker, was he not?

A That is correct.

Q Did Mr. Papahave any other attorneys?

A Present at that meeting?

Q With respect to any other investigations that you knew of.

A Yes, he did.

Q Who was that?

A Mr. Fahringer.

Q Mr. Fahringer and you with respect to the tax case, is that right?

A Right.

Q You say you were concerned that if Mr. Papa were sentenced to five years he would not be able to prepare for future cases, is that correct?

A That's correct.

Q Did you know of future cases?

A At that time--

MR. FISHER: Objection, your Honor, calling possibly for information clearly within the attorney-client privilege not waived by the testimony of this witness on direct examination.

BEST COPY AVAILABLE

THE COURT: I think the question could be reframed to obviate the possible exception. I think there is a legitimate area of inquiry here, but I don't think the question is whether he knew of future cases. I think he can be asked as to whether anyone had said anything to him which gave him reasonable ground to believe that there might be future cases.

Q You knew at the time of the tax investigation, is that correct?

A That's correct.

Q And the narcotics investigation, is that correct?

A That's correct.

THE COURT: You see, I still don't know what the tax investigation was, what years it covered, what years he finally pleaded to.

Q Mr. Musoff, what--

THE WITNESS: Your Honor, I did not handle the actual plea. After I related this information I stepped out of the picture and I didn't play a part --

THE COURT: We have the information that he pleaded to downstairs.

THE WITNESS: In the decision making process.

THE COURT: You don't know what years they were examining?

examining?

THE WITNESS: Yes. They were examining years I believe from 1967 through 1971.

MR. BELLER: The government has no further questions.

THE COURT: Any redirect examination?

MR. FISHER: No, your Honor.

THE COURT: All right, Mr. Musoff, you are excused.

(Witness excused.)

MR. FISHER: We have nothing further at this time, your Honor. We are awaiting the arrival of Mr. Druker at about 2 o'clock.

THE COURT: Is Mr. Rosenberg going to testify?

MR. FISHER: No, your Honor.

THE COURT: All right, then at this time I understand that Mrs. Rosner has handed up a medical excuse for Mr. Stanzione.

MS. ROSNER: I have, your Honor. The note reflects that as recently as yesterday he was examined by his physician, I believe it is Dr. Londin, and is still running a 102 fever.

I would suggest, your Honor, as the government did when we attempted originally to schedule these motions, that we hold the motions to suppress immediately before the respective witnesses testify. My experience is, your

Honor, that it never takes more than ten minutes at the outside and I don't see any objection. The government originally suggested the procedure and I think it is a situation where Stanzione should be present for this type of hearing.

THE COURT: The request poses somewhat of a problem here for me in this regard, that this is a case where I will be dealing with a sequestered jury and I don't think it is in the interests of anyone, the jurors, the court, the government or any defendant for jurors to have lengthy periods of time staring at the walls of the jury room while the court conducts what is supposed to be a brief hearing, but occasionally may extend and I don't cut anybody off if they have relevant proof to offer. I can't take a guarantee that the hearing will only take ten minutes.

MS. ROSNER: May I suggest this, then, your Honor.

THE COURT: I would like to meet your problem partway. One thought that occurs to me is that if he is not better tomorrow I might take the proof and not close the hearing. You and Mr. Stanzione can read the transcript and if when he returns, if I can take him at the end of the day or at a luncheon recess or something I might reopen the hearing and complete any matters which his reading of the transcript will call to mind. That would be one possibility.

MS. ROSNER: I have an alternative, your Honor, which may work just as well. I know your Honor contemplates long days because of our sequestered jury, but I would be perfectly happy, since the motion is made by us, to remain after the finish of the court day preceding the testimony of either of these witnesses or the first court day of trial or any afternoon convenient to your Honor and we could have the hearing then and not interrupt the jury's day or have them inconvenienced.

b3

THE COURT: You know I have to think about the supporting personnel. There is a limit to the number of hours which our dedicated staff people, the court reporters, the clerks, the marshals, all the other people can work. A couple of our defendants are in the House of Detention and they have to get there in time to have their dinner.

While I would like to get the case going as expeditiously as possible, and I have tried to be very emphatic with everyone, including the prosecutors, about my wishes in this regard, I think you come to a limit, you come to a practical limit of how much you can do on that.

It looks to me if what he has is the flu -- the doctor doesn't say what his condition is except that he has a cough and a general malaise and a fever of 102 degrees, which is not insignificant by any means, but it is not

likely to be long standing and I wonder why you couldn't come in tomorrow and do it.

MS. ROSNER: That is fine, Judge.

THE COURT: Why don't you run a check on his health tomorrow and we will see. I will see what time we can arrange it.

Can the government have the people here tomorrow?

MR. COONEY: Yes, we could have our witnesses here.

May I just say, your Honor, I would like to serve on Mrs. Rosner now and on the court -- I have already given it to Mr. Lopez -- an affidavit in opposition to this motion.

THE COURT: I thought it was agreed that the court should take proof on this motion.

MR. COONEY: Well, your Honor, the government's position is that there hasn't been an adequate factual showing that there are bases for any allegation that there is improperly suggested out of court photographic identification. We suggest in our affidavit that an expeditious way to handle this motion would be for the government to turn over to the court and to the defense counsel, make available to defense counsel the spread of photographs that were shown to the various witnesses and if after these witnesses have testified at trial and established the basis for the contention of their prior contacts with these defendants,

if there is any question as to the propriety of an out of court statement we could go further with the hearing, but we think pre-trial that the delivery to the court of the pictures should be sufficient.

THE COURT: I don't want to take anything ex parte. In fact as far as I am concerned you mark the exhibits, mark the pictures and give them to counsel. If counsel thinks the pictures are sufficiently representative so as not to be a ground for a grievance, I assume counsel will proceed accordingly.

MR. COONEY: I have no problem with that, your Honor. Perhaps we could do that.

THE COURT: I think you should do that and then Mrs. Rosner may respond.

MR. COONEY: Fine.

THE COURT: Would you take a look at his pictures. That should have been done earlier.

MS. ROSNER: Maybe if counsel can confer a little while we may be able to reach a disposition on it.

MR. COONEY: We may be able to resolve it.

MS. ROSNER: I don't offer that as a binding offer to stipulate, but we will explore it at least.

THE COURT: All right, I would like to take a short recess and I wonder if Mr. Cooney and Mr. Beller and

Mr. Fisher would join me with the court reporter inside.

10:30 tomorrow if we have to go forward with that.

Is there anyone here sitting for Mr. Laifer?

MR. ROSENBERG: I will cover for him.

THE COURT: Mr. Cooney, would you see Mr. Laifer gets this so-called rap sheet? He ought to look at it because I am prepared to rule on it. Will you see that he gets it?

MR. ROSENBERG: Certainly, your Honor.

THE COURT: That is for Mr. Giamarino.

(In the robing room.)

THE COURT: I wanted to deal with your inquiry which you made outside as to what disposition I had made of these motions and I felt that since you had presented at least a part of your application by documents which on your application were sealed and by an in camera hearing, that perhaps you would prefer to have your inquiry stated in the same fashion so we don't create any problems.

MR. FISHER::Thank you.

THE COURT: I am in the process of writing a short memorandum on this subject. It has taken me longer than I expected. I want to hear what Mr. Druker says about the plea bargaining and I didn't really realize I was getting more testimony from Mr. Druker until yesterday.

I have a slight logistics problem. I think you are entitled to have the findings made on your motion to suppress before you go to trial. I would love to wait for the Court of Appeals in Tramunti, but I think it would be unfair. So I have on the production line a memorandum I have to write in Mr. Laifer's matter and the question of this Rule 12 motion that you have, or the two Rule 12 motions which I expect to deal with together.

Now, the bottom line of it is that I am planning to determine those motions at the end of the trial. I am

stating the reasons for reaching that conclusion. Unless something unforeseen or something not set forth in your motion papers is introduced into it this afternoon I will exercise the discretion granted to the court under Rule 12 subparagraph 4 of the Criminal Rules. If this creates a problem for you to the extent that you have some plan which requires you to have a formalistic decision from this court, then you could disclose it to me and I will put everything else aside and do this first. I assume you would rather have me tend to the money first, but when you asked me the question which you asked outside in the flat out fashion in which it was posed I assumed that maybe you were anxious to resolve of record where the court was going, and if that is your problem please tell me and both sides of this case will have no full cooperation to get it out for you faster.

MR. FISHER: That is the case, quite frankly, your Honor. To be candid with you, after your Honor indicated that you were considering not deciding the motions pre-trial, I think I did say that it was our position that the court had no discretion in that area. Your Honor has vast discretion in how you proceed, but our position is the court is required to decide the question one way or another pre-trial.

THE COURT: May we are quibbling over the use of

the word "decide". Obviously the court has to deal with the motion, but I take the view that the court need not grant or deny relief with finality with respect thereto, but they hold these special issues for the disposition of the general issues. I am about 90 per cent completed in my research on this matter and while I was reacting in an impromptu and perhaps improvised fashion in my talks with you yesterday where I indicated what I thought I would do, I now find that there are reported cases which substantiate doing that and I expect to lay out the problem and reach the conclusions, cite the cases and give my reason. I am a little bit concerned about making a memorandum order, which I suppose would have to be sealed also, in view of the continuous requests to seal the Druker material, which I have honored in each case and which the government has not opposed. If you need that in a hurry I will get that for you as promptly as I can. All you have to do is to tell me. That is why I invited you in here.

MR. FISHER: I appreciate that. Might I just state this, your Honor. There is dictum mallah which does suggest in a double jeopardy motion the court may be well within its discretion and we insist the other way, but speaking candidly there is that dictum which suggests the court might well hold off.

THE COURT: I would ask you to try to not reargue the merits. I am trying to meet whatever tactical or practical problems face you in this matter.

MR. FISHER: I appreciate that.

THE COURT: If they don't exist, as I assume perhaps they do from what you said outside, then tell me they don't exist and I will take a longer lunch hour.

MR. FISHER: They do exist, your Honor. We are not interested in an opinion on the million dollars at this point in time. We are much more interested in your ruling on the due process double jeopardy motions because--

THE COURT: Does that have to be sealed?

MR. FISHER: Quite frankly, your Honor, I would hope that the court would deal with each motion separately, and I will tell you frankly why. We were planning to go to the Court of Appeals in the event that your Honor does not decide the issue pre-trial.

THE COURT: I inferred from what you said outside that that might be the case. Of course that's what the elevators in the building are for. You are certainly free to do that. Just tell me so I can file it accordingly. That is really what I was trying to find out. That is the purpose of asking you, that plus finding out whether you wanted it sealed. I expect to deal with them in a

single memorandum because I really think they are inextricably combined, but of course, since Stans v. Gagliardi, the Court of Appeals has showed a willingness to deal with these matters and, you know, if they want to they can. So I hope they realize that just like Stans v. Gagliardi we have this jury panel all set to come in here, all these taxpayers that we are going to have to lock up for three weeks.

All right, I think there is no purpose in discussing anything further with you at this time. I will make every effort to have my memorandum and order ready for you by the end of the day, with any luck. If there are proof-reading mistakes in it don't any of you take umbrage.

MR. FISHER: I am hardly in a position to do that, your Honor. Might I just say, so that I know -- we could be doing our research this afternoon -- your Honor is not deciding the merits of the issue, but merely indicating that you will not decide them at this point; is that roughly it?

THE COURT: I am basically relying on Rule 12, subdivision 4 and I am also relying on decided cases in this circuit and elsewhere. More of them, by the way, exist than I had thought. I had thought this was a question which people ordinarily didn't litigate, but I was surprised

to find that this problem is not unusual. I am preserving all of your rights under both motions. At least that is what I propose to do, unless they tell me I can't, and giving my reasons for the exercise of the discretion in that regard and I will try to get it in your hands as promptly as possible.

Now, how long are you going to be this afternoon?

MR. FISHER: I don't think we will be longer than an hour at most with Mr. Druker.

THE COURT: All right, then I suppose I should see you again at 2:15. Try to be a little early.

(Luncheon recess)

rgh 27

AFTERNOON SESSION

2:30 P.M.

Present:

Mr. Beller

Mr. Fisher

Mr. Rosenberg

Mr. Vincent Papa

--

THE COURT: How about Mr. Laifer?

MR. ROSENBERG: He is not here, your Honor.

THE COURT: Are you prepared to proceed?

MR.FISHER: Yes, your Honor, I am.

THE COURT: Let's get the witness in.

MR. FISHER: James O. Druker.

Your Honor, in the interest of expediting matters I wonder if wouldn't be permissible to make the affidavit of Mr. Druker a part of the record.

THE COURT: It is a part of the record, but you can't determine contested facts on affidavits.

J A M E S O. D R U K E R, called as a witness, having been duly sworn,testified as follows:

MR. FISHER: So that the record is clear, your Honor, this testimony will be limited to the due proces

aspects of the previous motion filed in October and will not go into the double jeopardy contentions.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Druker, how are you presently employed?

A I am an Assistant United States Attorney for the Eastern District of New York.

Q How were you employed in 1972, sir?

A I was a special attorney with the organized crime and racketeering section of the United States Department of Justice.

Q Was that your first position with the government?

A With the federal government, yes.

Q When did you become so employed?

A In July of 1970.

Q When were you admitted to practice?

A November, 1969, in Massachusetts.

Q Are youfamiliar with a prosecution brought against the defendant Vincent Papa by the Strike Force in the Eastern District of New York?

A Yes.

Q What was your relationship, if any, to the prosecution?

A I conducted the investigation and prosecution of Mr. Papa and others.

Q Were indictments filed in connection with that prosecution?

A There were.

Q Which were they?

A That I can recall specifically there were three. One I believe was 72 Cr. 88, which would have been filed around January of 1972. Then there was 72 Cr. 433, which would have been March or April -- probably April of 1972. Then there was 72 Cr. 478, which was May or June of 1972.

Q Would that be 72478 or 72473?

A 473 probably.

THE COURT: It is the one attached to the motion papers, isn't it?

MR. FISHER: Yes.

THE COURT: There is no argument about the genuineness of the indictment.

Q Now, you prepared an affidavit in connection with the proceedings herein?

A I did.

Q That was sworn to by you on November 11, 1974?

A Yes.

Q Therein you recite, do you now, these three affidavits?

A The three indictments do you mean?

Q I'm sorry, indictments, yes.

A Yes.

Q And you recite the dates that they were filed?

A Yes.

Q And the dates cited therein are correct, is that correct?

A To the best of my knowledge, they are.

Q With regard to 72 Cr. 88, that was an indictment based on the grand jury testimony of Paradiso?

A Of one Angelo Joseph Paradio.

Q And with regard to 72 Cr. 433, that was based on the testimony of Stanton Garland, is that correct?

A Principally, yes.

THE COURT: On the first indictment, was there other testimony besides Paradiso?

THE WITNESS: I would believe it would be principally Paradiso, but not exclusively and with regard to the second indictment principally Stanton Garland.

Q What other evidence was presented to the grand jury with regard to the Paradiso indictment?

A With regard to that indictment I believe there was

the testimony of Suffolk or Nassau County police officers. I believe I recall a James Thompson and possibly one or two other officers that testified.

THE COURT: Just surveillance testimony of Paradio?

THE WITNESS: Some surveillance and I believe search warrants. They testified with regard to the fruits of some search warrants that were executed in that case.

THE COURT: Against this defendant?

THE WITNESS: Against co-defendants.

Q With regard to 72 Cr. 433, the Garland indictment, what other testimony, if any, was presented to the grand jury generally?

A I can't recall offhand. There may have been a Bureau of Narcotics and Dangerous Drugs agent. All that I can actually recall is Garland.

Q Now, you testified about indictment 72 Cr. 473 which was referred to in your affidavit as a consolidated indictment.

A That's correct.

Q Consolidating the two previous indictments, is that correct?

A Yes.

Q Was testimony present to the grand jury beyond that which you have already discussed in connection with the

first two indictments?

A To the best of my recollection, no. My best recollection is that it was the same grand jury that heard the prior two indictments and that they were asked to supersede those two indictments.

Q During your prosecution of these cases against Vincent Papa you met from time to time, did you not, with his attorneys?

A Yes.

Q Who?

A Variously it was Theodore Rosenberg, Esq., Frank Lopez, Esq., Wally Musoff, Esq., and Gino Gallana.

Q Do you recall the point in the pre-trial happenings in connection with those cases that a witness for the government disappeared?

A Yes.

Q Was that on or about June 30, 1972?

A Yes.

Q Do you recall thereafter discussions with counsel for Papa with regard to a plea bargain?

A Yes. Both prior thereto and afterwards.

Q Did you have a conversation on or about August 18, 1972, with Messrs.Rosenberg and Musoff?

A I can't recall the date. I had numerous

discussions during that whole period in various combinations, Mr. Musoff alone, Mr. Gallina and Mr. Rosenberg, Mr. Lopez and Mr. Gallina. Some telephone and some in person. I couldn't give you the dates of any.

Q All right, in any event do you recall a conversation where only those present were you, Mr. Rosenberg and Mr. Musoff?

A I have no specific recollection. I am not saying there wasn't, there probably was. I don't specifically recall any.

Q You recall, however, a conversation in relation to plea bargaining with regard to Mr. Papa had with Mr. Musoff?

A I recall --

THE COURT: You are talking of Mr. Papa had by yourself and Mr. Musoff.

THE WITNESS: Mr. Musoff came in fairly late in the game,as I recall, and his role--

THE COURT: Can't you just answer counsel's question. Do you recall any such three-way conversation?

THE WITNESS: I can't specifically. I recall discussions with Mr. Musoff, but I can't recall who elese was present during those discussions.

Q Now, during the course of the various negotiations

that you have described, these negotiations led ultimately to a plea bargain, did they not?

A Yes.

Q When in point of time was a bargain reached?

A I believe the bargain was finalized on August 18, 1972. It may have been shortly prior thereto, but that would be my best recollection.

Q How, sir, do you fix that date?

A The first step in the bargain that we had consummated was to be the surrender of three or four of Mr. Papa's co-defendants which took place I noticed on my file this week on August 21st of 1972. Something that I reviewed in my files indicated to me that I had met with them on August 18th. I can't recall what it was, but that would be the preceding Friday, which I believe is when the agreement was finalized. May have been shortly prior to that.

THE COURT: These were fugitives who were surrendering or people on bail or what was it?

THE WITNESS: These were fugitives. Part of the agreements was that these individuals would surrender themselves on August 21, 1972.

Q This bargain that was arrived at on or about August 18, 1972, was arrived at in a conversation between you and counsel for Papa, is that correct?

A Yes.

Q Who specifically were present?

A Again at that time Mr. Musoff I remember had the lead, more or less, in the discussions. I am certain that he was present. I can't recall which, if any, or how many of co-counsel were present.

Q Please relate to us as best you can the conversation as it related to the final bargain struck.

A All right, let me say my best recollection is that Mr. Rosenberg was present also, although I can't say for sure.

The final discussion was that -- and I don't recall which specific defendants. It was I believe somewhat of a package deal. Mr. Daniel Ranieri, Mr. Rocco Evangelista and I believe Mr. Anthony Passero, who at that time were fugitives, were to surrender to the government on August 21, 1972. They were to be processed and printed. Subsequently, as part of the package the government was to dismiss the cases against them. Mr. Papa and I believe some other people, but I am not certain, but I know Mr. Papa was to plead guilty on September 5, 1972, to a one count conspiracy plea on the indictment. I believe it was a 173 or a 174 Title 21. The government was to recommend a five-year sentence for Mr. Papa and it was fairly well understood that the judge

would listen strongly to the government's recommendation in the case. Mr. Papa would surrender on October 2, 1972, and as soon as I had received word of his surrender the government would dismiss against Mr. Passero, Mr. Ranieri and Mr. Evangelista.

THE COURT: Who was the fourth fellow?

THE WITNESS: Di Ametto, possibly. Possibly Frank Di Ametto.

Q Was a man named Virgil Alessi part of this bargain?

A Yes. With regard to Mr. Alessi, I believe the government was to dismiss against him, I am not a hundred per cent certain, and I believe Mr. Passero was to take a guilty plea rather than be dismissed. I can't remember all of the details in that regard.

Q Was anything else promised to counsel for Papa in return for his plea?

A Are we referring now to what the plea would cover him on?

Q Yes.

A Mr. Papa was advised-- he was concerned he said about -- through his attorney --

THE COURT: Was he there?

THE WITNESS: No. This would have been through Mr.

Musoff and possibly Mr. Rosenberg and possibly one or more co-counsel. Mr. Papa, through his lawyers, advised that he was concerned about being indicted again on the same conspiracy. He wanted to know that once he took his plea and was sentenced, that that would be the end of his case. I advised Mr. Papa's lawyers that he was covered as far as this conspiracy went. I told him that the state of the law afforded him this; that if it should subsequently turn up next month or next year that a witness came to us with evidence against Mr. Papa on another piece of this same conspiracy, that he was covered on that. I further made clear to them that should a witness pop up who gave us evidence of unrelated criminal activities on Mr. Papa's part, even though it was during the same period of the conspiracy, that he was not covered on that.

Q Now, you used the word "covered" here. Is that the word you used then, if you can recall?

A No. What I would have said then is that he is covered on this conspiracy and he won't be indicted for reindicted or rearrested for any piece of this conspiracy. I think I went into a little more elaboration. I advised, for example, that if somewhere down the chain of the ladder it turned out that Mr. Loria had been selling heroin to [redacted] six people who were not named in my conspiracy but

BEST COPY AVAILABLE

that it developed or became clear that this was as a result of the same chain from Mr. Papa on up, that he would be covered on this. Anything to do with that conspiracy.

Q That conspiracy or crimes going out of that conspiracy were covered?

A That conspiracy or any of the overt acts contained in that conspiracy.

Q At that point in time Mr. Papa stood indicted, did he not, under an 848 count, which was the fifth count in 72 Cr. 473?

A That's correct.

Q Was counsel for Papa told at that time by you that his plea as contemplated to the conspiracy count would satisfy count 5, the life count?

A Well, I believe he was told that his plea -- I think the understanding was-- was in satisfaction of the indictment.

Q And every count naming him contained therein, is that right?

A Yes.

THE COURT: You used the word "unrelated" in one of your recent answers. Is that the word you used in your discussions with these people?

THE WITNESS: To my best recollection, yes, sir.

THE COURT: Did you qualify or modify or explain that word "unrelated" in any way?

THE WITNESS: I gave them a hypothetical which, if I recall, was that if a witness popped up and it were a witness that was part of this same conspiracy and he told us about Mr. Papa being involved in hijacking activities during that same period of time, even though there may be some of the same cast of characters involved, that he would not be covered on this.

THE COURT: Did you have a suspicion at that time that he had been involved in hijacking activities?

THE WITNESS: No, but I used the phrase to them. I said I didn't want to give him a carte blanche for everything that he may have done in the past. I said he is covered on this conspiracy and that's it. I do remember using the term "carte blanche" and telling them that he was not going to be covered on everything that he had done during that period of time or prior.

Q Do you recall posing a hypothetical involving stolen watches in a hijacking?

A Yes.

THE COURT: What was the basis for using a reference to hijacking? Did you connect Mr. Papa in some manner with hijacking?

THE WITNESS: No. I just tried to pick something-- it was just the first non-narcotic crime that entered my mind. It could have been bank robbery or something else. Hijacking just happened to hit me at the moment.

Q So with regard to or in consideration for Mr. Papa's plea to count 1 of the consolidated indictment, Mr. Druker, he was promised then that he would not be prosecuted for further aspects of that conspiracy, would that be a fair statement?

A Yes.

Q Even if they were to form substantive counts?

MR. BELLER: Your Honor, I object.

THE COURT: I will overrule the objection, although I think that the objective test has to be applied to what Mr. Druker told the attorneys. I will take the answer.

A I told them what I just testified to and I also told them that -- I said "I am giving him what the law affords him." I said he can't be indicted again on the same conspiracy. Beyond that and the one or two hypotheticals that I mentioned I didn't elaborate any further, nor did they.

Q Was there any discussion about the possibility of a substantive count involving transactions relating to the conspiracy to which he had pleaded?

A There may have been. I have no specific

recollection of any.

THE COURT: What is your basis for saying there may have been?

THE WITNESS: Simply that I can't say a hundred per cent that there wasn't. I don't recall it at all. I have absolutely no recollection of it. I know that something was mentioned about overt acts from our conspiracy that he was covered as far as those were concerned.

Q As far as substantive counts?

A Well, the terms we used were overt acts.

MR. BELLER: Your Honor, I object to Mr. Fisher's characterization.

MR. FISHER: I'm sorry.

THE COURT: I think within reason Mr. Fisher may explore the witness' subjective thinking, but what is really more important is what did he say.

THE WITNESS: The term that we referred to was overt acts.

Q What I am trying to get at, was anything --

A I remember I said we are not going to pluck out an overt act out of this conspiracy and then turn around and reindict him on it.

Q So that Mr. Papa was promised as well, then, in return for his plea, overtacts in furtherance of this

conspiracy would not give rise to subsequent individual prosecutions?

A That's correct.

Q Was there any discussion with regard to related investigations of Mr. Papa?

A Yes.

(Mrs. Rosner and Mr. Lopez entered courtroom at this point in time.)

Q What were they?

A In June of 1972, or thereabouts, my best recollection is June, I was advised that the Internal Revenue Service had a tax case going, or a tax investigation which they were proceeding with against Mr. Papa. I remember a special agent came up and asked me if I was handling the Papa narcotics case and then he advised me of his investigation. Following this I disclosed the investigation to counsel for Mr. Papa and this in itself became a subject of the plea bargaining.

Q What was agreed upon between counsel for the government and the defendant with regard to that investigation?

A This was part of what we referred to previously as the package. Mr. Papa would be pleading to one count of an income tax information charging him with evasion and that he would be sentenced to five years on that, or

that the government would recommend a five years' sentence, which was to be concurrent with the narcotics sentence.

Q And that plea, or the plea package would then satisfy whatever Internal Revenue investigation was then pending against Mr. Papa?

A That's correct. It was in satisfaction of the indictment which encompassed -- of the information, which encompassed all aspects of the IRS investigation.

THE COURT: Did you have a practice at that time to reduce such a bargain to writing?

THE WITNESS: No. It would generally -- subsequently we developed a practice of putting such agreements into a memo form or a letter to counsel with a copy to the court. At that time we did not.

THE COURT: Either in your own files or in your dealings with opposing counsel?

THE WITNESS: No. Earlier in this particular case I had done a memorandum to Washington to the Organized Crime Section asking for approval on a plea package which subsequently fell through because of the escape of one of my witnesses. That was the only -- the only part of the plea bargaining that was reduced to writing in this case.

THE COURT: A more rigorous bargain that was proposed.

THE WITNESS: Yes.

THE COURT: Was any part of this bargain disclosed to the court?

THE WITNESS: Of the previous bargain?

THE COURT: No. This present one, the one you are testifying to.

THE WITNESS: Yes.

THE COURT: In what manner or by what means?

THE WITNESS: It was disclosed to the court by my going into chambers with the trial judge, stating to him what counsel had offered to us, stating the weaknesses of our case, the problems that we faced and asking if the court would go along with the government's recommendations in the case to which the court indicated that-- I think the judge's words were "I don't give out any guarantees, but you can tell counsel that I will listen very, very strongly to the government's recommendations in cases like this and they can pretty much be assured that the government's recommendation will be followed."

THE COURT: This occurred prior to the meeting that you are just testifying to?

THE WITNESS: This occurred after August 18th, I believe, and on the morning -- I would say that this occurred on September 5th, the morning of the actual pleas,

A [redacted] A 150

that I stopped into the judge's chambers out in Westbury and that if his answer was negative the whole thing would fall through.

Q Prior to your testimony here today, Mr. Druker, you have had conversation with me, have you not?

A Yes.

Q And therein have I ever asked you to check your files for the possible existance of any inter-office memoranda or any inter-departmental memoranda with regard to the plea bargain package we have been discussing?

A Yes.

Q And you found none, other than the one you described to the court.

A That's correct, yes.

Q With regard to the one that you described to the court have you had occasion within the last few weeks to look at that?

A I would say a month or so ago I reread it.

Q And does that document in any way -- would it in any way assist you in your recollection of the events we are now discussing?

A No. That document simply had terms --

THE COURT: He just asked you whether it would assist you in refreshing your recollection. That's all. Your

answer is yes or no.

A The answer is no.

Q In addition to the promises and conditions that you thus far described was anything said between counsel here regarding related investigations of Vincent Papa?

A I am not sure if I understand. In other words, did I tell him that we had other investigations or that we didn't have other investigations? Were any promises made with regard to the non-prosecution and/or non-existence of related investigations of Vincent Papa?

A I [redacted] counsel for Vincent Papa that this encompassed what we in the Eastern District had going against him and that to my knowledge there were no further cases pending against Mr. Papa in the Eastern District of New York.

Q In fact, quoting from your affidavit on page 5, paragraph 10, you told counsel for Papa that "His pleas would satisfy related investigations of him in the Eastern District of New York"?

A I am not sure if the wording of that is quite accurate. I told him -- what I told him was that this is everything that I know about that's going against Vinny in the Eastern District of New York and he is covered on this stuff or these cases. I don't think the wording of that is quite accurate.

Q Did you prepare the affidavit filed in connection with these proceedings dated November 11, 1974?

A I prepared them in the sense that I sat -- I wrote down my recollection of these events, I discussed them with Mr. Cooney and Mr. Beller afterwards and they asked me questions on a number of aspects of it. I believe Mr. Cooney prepared the affidavit, which I read, checked for accuracy and I think I might have made one or two minor corrections on it and following that I signed it.

THE COURT: At that time you were not working directly in the office of the United States Attorney of the Eastern District, were you?

THE WITNESS: At the time of the affidavit?

THE COURT: No. At the time of these discussions with Mr. Musoff and Mr. --

THE WITNESS: No. I was with the Strike Force, which was a separate entity.

THE COURT: Would you, in the course of your regular duties, know or have reason to know what investigations or inquiries were pending against Mr. Papa in the office of the United States Attorney at that time?

THE WITNESS: Yes. It was joint filing and administratively everything was joint. I would have known about any other cases against Mr. Papa in that district.

Q In words or in substance, Mr. Druker, were counsel for Papa told that his pleas would satisfy whatever investigations were then known to you in the Eastern District of New York?

A Yes.

Q And that representation --

THE COURT: To you or to the United States Attorney?

THE WITNESS: Well, when I said to me, it actually meant the same thing. It meant any investigations -- I represented that I had checked in the Eastern District of New York; that these were the only two cases that I knew of that were pending against Mr. Papa and that, therefore, this plea satisfied everything that we had going in the Eastern District of New York.

Q Now, during these discussions a pleading date was set, wasn't it?

A Yes.

Q And that was September 5, 1972?

A Yes.

Q Were your representations continuing to and including the pleading date?

A My representations as to what, everything?

Q Well, your representation regarding --

THE COURT: Why don't you go to the underlying

question. Did you say anything additional or different to this defendant or his attorneys with respect to the plea bargaining between the date you have just testified to and the date that he pleaded guilty?

THE WITNESS: No, the question wasn't raised as to -- no one ever considered the question of what would happen if someone came in with a new case between the date of the finalization of the agreement and the date that he pleaded or was sentenced or surrendered.

THE COURT: Did you say anything to them on this subject--

THE WITNESS: No, I don't believe this was ever raised.

THE COURT: During that period.

THE WITNESS: No.

Q In any event you had told them that with regard to investigations known to the Eastern District of New York of Vincent Papa, the pleas that you were negotiating would satisfy each and every one of those?

A Yes.

Q We are talking now about mid-August of 1972, isn't that right?

A Yes.

Q You now know, do you not, that on or about July 17,

1972, a man named Joseph Ragusa made a statement to a colleague of yours in the Eastern District Strike Force, William Murphy?

A Yes.

Q You are now familiar with the substance of that statement, is that correct?

A Yes.

MR. FISHER: May this be marked for identification for purposes of this hearing, your Honor?

THE COURT: Mark it.

(Defendants' Exhibit A marked for identification.)

MR. FISHER: May we have a stipulation from the government that this is a true and accurate copy of the statement submitted by Mr. Ragusa?

THE COURT: It was in the possession of the United States Attorney's office prior to September 5th, is that right?

MR. BELLER: On Mr. Fisher's representation that it was a copy of the statement submitted on the previous occasion --

MR. FISHER: I do so represent.

MR. BELLER: All right.

THE COURT: All right.

(Defendants' Exhibit A received in evidence.)

Q Prior to September 5, 1972, the pleading date in the Papa case, were you specifically advised of the existence of Joseph Ragusa and his cooperation with your department?

A Yes.

Q Were you further advised that Mr. Ragusa had implicated in allegations the defendant Vincent Papa?

A Yes.

Q With regard to prior alleged narcotics transactions?

A Yes.

Q Involving somewhere around 50 kilograms of heroin?

A Yes.

Q This then was known to you prior to September 5, 1972?

A Yes.

Q Was that disclosed to Vincent Papa or his counsel, the existence of that investigation?

A No, it was not.

Q Any investigation in the Eastern District of New York of Vincent Papa would have been included in the term "related investigation," true?

MR. BELLER: Objection, your Honor.

THE COURT: Sustained.

Q In the context of the conversation had with counsel for Papa, the phrase "related investigations" referred to investigations, all investigations of Vincent Papa, isn't that right?

MR. BELLER: Objection, your Honor.

THE COURT: Well, it is certainly objectionable as to form, but the difficulty presented is that the state of mind, the subjective state of mind of Mr. Druker may become relevant in this hearing and I think we ought to take it subject to connection or subject to a motion to strike. If a better question were framed I would allow him to testify to what his state of mind or viewpoint or opinion was with respect to what this Ragusa investigation comprised.

MR. FISHER: I could do it a little more slowly, your Honor.

THE COURT: I will take it subject to connection and Mr. Beller may have an exception and a motion to strike.

Q Do you recall a conversation with Wallace Musoff where Mr. Musoff indicated that the plaintiff was concerned after having pled guilty to one or more charges in the Eastern District case and being incarcerated pursuant thereto he would have to fear subsequent prosecution on other charges?

BEST COPY AVAILABLE

A Yes.

Q What was said by you in the context of those statements by Mr. Musoff?

A Mr. Musoff had referred to pieces of my conspiracy being taken out and causing him to be reindicted. I had told him that he was covered on the tax case, he was covered on the narcotics conspiracy and that no pieces could be taken out of that and used to form subsequent indictments, no overt acts out of my conspiracy nor the conspiracy itself.

Q And what about related investigations?

A I can't actually recall a discussion of that other than my simply telling him that these comprise my knowledge of everything that was going against Mr. Papa in the Eastern District and that he was covered insofar as these two cases were concerned.

Q I believe you previously testified today, and I want to make sure that your last statement --

THE COURT: Don't make a speech to him. Just frame another question.

Q The conversation with regard to related investigations that you had with counsel for Papa included, did it not, a promise that his pleas would satisfy all related investigations of Papa known to the Eastern District?

A Yes.

Q The term related investigations referred, did it not, to any investigation of Vincent Papa?

MR. BELLER: Same objection.

A In substance, that was my promise.

THE COURT: I think I will have to sustain the objection to the question in the form which asked.

You did or did not know on August 18, 1972, of the existence of Exhibit A?

THE WITNESS: I knew of the existence but not the content.

Q Prior to September 5, 1972, you knew however of the substance of the content of Exhibit A, isn't that right?

A Yes.

THE COURT: Did you know on August 18th that that exhibit had any connection with Vincent Papa?

THE WITNESS: No. My only connection with that had been as a notary. I knew nothing of the contents nor did I know really who Mr. Ragusa was until after August 18th.

THE COURT: How and under what circumstances did you learn of it after August 18th?

THE WITNESS: Mr. William Murphy, who had been the attorney that was handling Ragusa, was leaving the government.

He had given his resignation and his cases were being distributed throughout the office. At that time this particular matter was given to me in that I had had the cases against Vincent Papa and I believe I was given a file on it. I was certainly given this exhibit.

THE COURT: What, if anything, did you do with that file?

THE WITNESS: I kept that file and I believe I opened my own file against Mr. Papa.

THE COURT: And this was all before September 5th?

THE WITNESS: Yes.

THE COURT: And you had it as an active file against Mr. Papa on September 5th?

THE WITNESS: No. I had Mr. Murphy's information, which I am not sure if it was a file or not. I know I didn't open a file on it until October 10th or 11th.

THE COURT: And then you opened it as an active file against Mr. Papa?

THE WITNESS: Yes. October 11th I believe was the date on which it was opened.

Q With regard to theactive file, Ragusa v. Papa, colloquially, your Honor, there were two aspects to the Ragusa information regarding Papa, isn't that right? There was revelations or allegations regarding to prior

conduct of Mr. Papa--

A That's correct.

Q Together with indications of possible subsequent conduct of Mr. Papa?

A Yes.

Q The active file then related to those allegations of Mr. Ragusa regarding what was going to happen?

A In the future?

Q Yes.

A I believe so. I can't remember whether I actually separated them at that point or not.

Q But the reason for the formation of an active file was because Mr.Ragusa had indicated that there would be subsequent narcotics activities between him and Papa, isn't that right?

A Yes.

MR. FISHER: No further questions.

THE COURT: Mr. Beller?

MR. BELLER: I will be very brief.

CROSS-EXAMINATION

BY MR. BELLER:

Q How was the tax investigation brought to Mr. Papa's attention?

A I believe in June of 1972 I brought it to his

attention, I presume by advising one or more of his attorneys of its existence.

Q Did you discuss that matter with your superiors?

A Yes.

Q Who was your superior at that time?

A Mr. Dennis Dillon.

Q What was the reason you disclosed that investigation to Mr. Papa?

A Number 1 -- there were two reasons. Number 1, I just couldn't disclose an IRS investigation without some authorization from the Internal Revenue Service itself and from Mr. Dillon and, number 2, it was what I felt to be an ethical obligation. I had represented in the course of the plea bargaining that the narcotics conspiracy against Mr. Papa was the only case that I knew about. Now another case came to my attention and I felt that I had a good faith obligation to reveal its existence.

THE COURT: Had IRS referred that to the United States Attorney for prosecution?

THE WITNESS: No. They had come directly to me. They had a Strike Force program at that time under which-- and they also had a narcotics program.

THE COURT: This special agent was assigned to the Strike Force?

THE WITNESS: He was assigned either to the Strike Force unit or to the narcotics unit, but in either case he came directly to us rather than through the United States Attorney. My concern was that if I couldn't reveal this case to defense counsel then I would have to simply tell them that whole plea package was out.

Q When you checked the files prior to August 18th, that is the Eastern District files, was the Joe Ragusa file disclosed to you in any way?

A Prior to August 18th?

Q That's correct.

A No.

THE COURT: Had you ever heard of Ragusa prior to August 18th?

THE WITNESS: Only -- I remember August 17th Mr. Murphy was in the next office to me. It was in the evening. He asked me to come in. It was some urgency. I think he introduced me to a Mr. Ragusa at that point. He said Mr. Ragusa made a statement which he would like me to notarize. I had Mr. Ragusa swear to it and I notarized it. Mr. Murphy had at that time a piece of paper over everything except for the bottom portion where it called for a signature. That was my sole introduction to Mr. Ragusa and I had no knowledge of the contents of the paper.

Q Then some time between August 18th and September 5th you learned of the contents of the affidavit, is that correct?

A Yes.

THE COURT: Was that normal, for you to notarize affidavits in that office where they were covered by paper?

THE WITNESS: Only with Mr. Murphy. Mr. Murphy-- we used to tease him about it a great deal. He was extremely secretive and paranoid. He didn't want anyone else in the office to know anything about his case or what he was doing. It struck me as curious that he conspicuously put a piece of paper over the affidavit and left the bottom blank since I had the same clearances that he had, but nevertheless I notarized it and joked about it with the other attorneys in the office the following day, I believe.

Q Why were you the one who notarized that affidavit?

A I was either the only notary in the office at that point or one of two and I was in the next office to Mr. Murphy.

Q So it had nothing to do with your own investigation, is that correct?

A No.

Q Some time between August 18th and September 5th

you learned of the Ragusa file, is that correct?

A Yes.

Q Did you have a conversation again with Mr. Dillon about that information?

A Yes.

Q What was the substance of your conversation with Mr. Dillon?

A At that point I was faced with the same situation that I had with regard to the tax case. I asked Mr. Dillon whether or not we had an obligation to reveal this to the defense attorneys and we decided that for two reasons we didn't, one being that it would jeopardize -- that this related to information on something that was to happen subsequently and that if we advised defense counsel the new narcotics transaction would in all probability not take place. Secondly --

THE COURT: This is a narcotics transaction that you thought he was going to conduct from the federal prison in Atlanta?

THE WITNESS: No, this is prior to his surrender. We had been -- we had information that Mr. Papa intended to do one last big narcotics transaction before he surrendered. I was told before the date of his plea that I could expect some sort of a request for an adjournment on his surrender

date and that if I got to it to consent to it so we could allow him the opportunity to conduct this transaction. So I felt that this would jeopardize security for me to reveal this and I further felt that this was something that was going to happen in the future. I wasn't actively investigating any past allegations wherefore Mr. Dillon and I agreed not to advise defense counsel of this.

Q In the discussion that you had with the judge in Westbury, was anyone else present?

A The judge's law clerk, to my best recollection, myself and I don't believe anyone else was present. I am not a hundred per cent certain on that.

Q How long did you spend with the judge?

A Five minutes.

Q What was the substance of the conversation with the judge?

A I told the judge that we had this offer from Mr. Papa. I told him that my narcotics case was extremely weak and probably a certain loser in that Stanton Garland had escaped. I told him that we had a very strong case against Mr. Papa, which was the only reason for the plea. I told him of the offer of defense counsel and asked whether he would go along with our recommendation of five years. The judge stated that he thought that this was extremely

light for someone of Mr. Papa's record or propensities. He stated "You had better get up there and make some sort of a pitch on the record putting down some reasons why I should be so lenient," he said, "Because I don't want to take something like this on my back." I stated that I would represent on the record the weaknesses of the government's case and he stated "If you are willing to go ahead and do that, then that's fine with me" and something to the effect that if I thought it was in the best interests of justice.

Q Mr. Druker, where was your office at that time?

A Our office was at 35 Tillery Street. The IRS side of the courthouse on the third floor.

Q Is that in the same area as the United States Attorneys in the Eastern District?

A The United States Attorney's office is on the opposite side of building G. It is actually two buildings connected by a common foyer.

Q In your affidavit you state that "With respect to other investigations counsel to Vincent Papa were put on actual notice that my representations referred only to Eastern District of New York." Would you explain to the court how you limited the agreement.

A As I testified on direct I stated on a number

of occasions that this is all that we have got going against him in the Eastern District. This covers him against everything that we have going against him in the Eastern District. Somehow the million dollars or thereabout that had been received from Mr. Papa earlier in the year. I believe I was asked about it and I stated "Look, you fellows know more about it than I do. I read about it in the newspapers. He is asking that he put a hold on it. It is in Southern District's bailiwick and I don't know what, if anything, they are going to do with it" and that's it.

Q Did any one of Mr. Papa's attorneys or Mr. Papa himself through someone else ever ask you to check across the river in the Southern District as to pending investigations?

A No.

Q Or as to an agreement by the Southern District to join in the plea bargaining?

A I was not asked to check with any other jurisdiction to see what, if anything, was going on against Mr. Papa.

MR. BELLER: I have no further questions.

MR. FISHER: Briefly, your Honor.

THE WITNESS: Nor did I do so.

REDIRECT EXAMINATION

BY MR. FISHER:

Q In your conversation with Mr. Dillon with regard to the so-called Ragusa investigation, Mr. Druker, the two prings of the Ragusa information were discussed between you and Dillon, isn't that right?

A That's correct.

Q The one relating to the narcotics activities alleged by Ragusa about Mr. Papa in January roughly and February of 1972 being the past --

A Yes.

Q And with that there was no problem about disclosing to Mr. Papa?

A No, there wasn't.

Q Merely by virtue of the fact of disclosing the informer?

A Yes.

Q That was the only problem?

A Yes.

Q You told the court I believe in response to the court's questions that there were allegations that Mr. Papa would be dealing in narcotics between the date of his plea and the date of his surrender.

A Yes.

Q And these allegations came, did they not, from Mr. Ragusa?

A I believe so. I received them through an agent of the BNDD, who I am certain, although I don't recall for a fact, received them from Mr. Ragusa.

THE COURT: When did you get it from the BNDD?

THE WITNESS: It was shortly before Mr. Papa's plea. Just shortly prior thereto.

THE COURT: After August 18th?

THE WITNESS: Yes.

Q In the August 18th conference when there was a pleading date set for September 5th, was there also a surrender date agreed upon then?

A No. I think --

THE COURT: I thought you told me there was.

A The September -- on August 18th, thinking back, we weren't even able at that point to fix the plea date. We knew that he would plead and we knew that he would surrender and we were reasonably certain what the terms of the sentence would be. I believe Judge Travia was on vacation at that point and we left it that I would set up the earliest possible surrender day -- the earliest possible plea date with Judge Travia. In fact I am certain he was on vacation because the individuals who were surrendered on

the following Monday surrendered to Judge Rayfiel or one of the other judges, so at that point my best recollection is that the dates were not fixed.

THE COURT: Was there an understanding that sentence was to be fixed on the date of the plea without the necessity of any pre-sentence report?

THE WITNESS: Yes. It was agreed that counsel for Mr. Papa would waive a pre-sentence report.

THE COURT: And that you would also on behalf of the government?

THE WITNESS: Yes.

THE COURT: I have to take a short recess. Is there very much more for this witness?

MR. FISHER: I have a few questions, but I think a recess would be appropriate.

THE COURT: All right.

(Recess.)

MR. FISHER: May I proceed, your Honor?

THE COURT: Yes.

BY MR. FISHER:

Q Mr. Druker, referring again to the information through the agent from Ragusa about a possible subsequent narcotics transaction involving Mr. Papa, was a surveillance [illegible] of Ragusa's home as a result of that investigation?

BEST COPY AVAILABLE

MR. BELLER: I object, your Honor.

THE COURT: I think he means Papa's home.

Q Ragusa's home and Papa's home.

MR. BELLER: I object, your Honor.

THE COURT: I may have to sustain the objection. I don't see what it would be relevant. You can make an offer to shw that they did.

MR. FISHER: The offer of proof would be based upon the affidavit by Mr. Druker already filed, your Honor, to the effect that as a result of that information an 8-day, 24-hour surveillance with about 12 agents was employed on the Ragusa residence and on the Papa residence and all that ever happened on the basis of Ragusa's information was that Ragusa skipped away from the jurisdiction.

THE COURT: I think to complete the record there is no reason why he couldn't tell us that, but I don't want you to convert this hearing into --

MR. FISHER: That would be my last question.

THE COURT: All right. There is no dispute over this, is there?

MR. BELLER: No. We are just concerned about discovery.

THE COURT: I know what you are concerned about.

MR. FISHER: Perhaps we could stipulate and I would

have no further questions.

MR. BELLER: If it is in the affidavit --

THE WITNESS: No --

THE COURT: The witness wants to indicate that isn't so.

THE WITNESS: I don't remember the exact term being eight days, and I hope my affidavit isn't to the contrary, but it was strictly limited to Mr. Ragusa's residence. At least that's what my directions were. I have no way of knowing what the surveillance was, but I know I instructed Agent Salvamino to conduct a 24-hour a day surveillance on Mr. Ragusa's residence, period.

THE COURT: And he found no evidence indicating that a transaction was underway?

THE WITNESS: That's correct.

Q And in fact during that intensive surveillance Mr. Ragusa fled the jurisdiction, isn't that right?

A Yes.

MR. FISHER: No further questions.

MR. BELLER: Your Honor, may I have just one moment?

THE COURT: Certainly.

(Pause)

CROSS EXAMINATION

BY MR. BELLER:

Q Mr. Druker, in paragraph 12 of your affidavit you state "In September, 1972, either shortly before or after Papa's entrance of the plea, I was advised by agents of Drug Enforcement Administration that they had information that Ragusa had again been asked by Papa to act as a stash man." What is your best recollection at the moment as to the date you received that information?

A I couldn't, of course, fix an exact date. My best recollection would be some time between August 25th and September 1st.

Q You do believe it was before the plea, though, at this time?

A Yes.

MR. BELLER: No further questions, your Honor.

THE COURT: All right.

MR. FISHER: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. FISHER: The defendant Papa rests, your Honor.

THE COURT: All right. The government?

MR. BELLER: The government has no witnesses, your Honor.

THE COURT: All right. The matter is marked fully

submitted.

Now, while I have you here --

MR. FISHER: Excuse me, your Honor, might I just do this. You recall, I know, that in the other proceedings, the grand jury testimony of Ragusa on July 18, 1972, was marked as an exhibit in that hearing. Could that be deemed marked for the purposes of this hearing as well?

THE COURT: Yes, but if you want that you ought to tell me what you are offering it to show so that I don't get the factual context too mixed around.

MR. FISHER: Surely, your Honor. To show that at least on July 18, 1972, there was an Eastern District investigation of Vincent Papa with regard to the Ragusa allegations.

THE COURT: I don't think that is disputed. Is it?

MR. BELLER: There was a matter in the office. I am not sure what it would be called, but there was. If there was grand jury testimony, then there was grand jury testimony.

THE COURT: When you take a witness, an informant and interview him and make an affidavit telling what he knows, have a file and put it before the grand jury, ultimately I would call it an investigation.

rgh

MR. BELLER: Whether it was intelligence information or intelligence or a case, at the moment I wouldn't say, but there was something in the office.

THE COURT: All right.

Now, I wanted to go back on some of the other loose ends that we have here. I am preparing and probably will file late today or early tomorrow a memorandum determining the motion of Vincent Papa, Jr. with respect to the suppression of the million dollars. Basically I am concluding with respect to him that he doesn't have standing to suppress the evidence.

I believe you indicated to me this morning, Mr. Fisher, that as far as you were concerned you and your client consent to a separate filing of my formal findings of facts and conclusions as to the suppression to be done in the near future.

MR. FISHER: Yes, your Honor.

THE COURT: And you don't care if they are done by Monday, as long as you know what the bottom line is.

MR. FISHER: That's all that counts at this point, your Honor.

THE COURT: I am relying upon that because I have a problem of taking care of some of these matters before we begin our presently scheduled trial.

Now, we will be in recess briefly. I am closing this particular hearing, but I ask counsel to please approach the side bar.

MS. ROSNER: Your Honor, before we recess we have a couple of loose ends that have been made into neat bows.

THE COURT: Let me hear what your neat ends are.

MS. ROSNER: Mr. Lopez and I went to Mr. Cooney's office at 2 and he very graciously afforded us access to the agents who indicated what their testimony might be at a Wade type hearing and showed us the photos involved in the interviewing of the witnesses Raguda and Budy after interviewing the agents and getting a preview of how the hearing would be, I at least on behalf of Mr. Stanzione have concluded that we need not take up your Honor's time with it. We are fairly satisfied concerning the identification procedures. So I would withdraw my motion with your Honor's permission.

THE COURT: All right, I think I ought to direct Mr. Beller to inform all of the Assistant United States Attorneys that occasionally by revealing material matters can be shortened. The motions can be withdrawn.

MR. LOPEZ: Most respectfully, your Honor, in respect of Vincent Papa, Jr. I make the same application.

rgh

THE COURT: The applications are granted.

Mr. Beller and Mr. Fisher and the court reporter, please.

(In camera discussion at the side bar.)

THE COURT: I expect to file a memorandum and order very shortly in connection with our discussions of this morning and I would really ask both of you to stand by and it will be given to you. You can stand by here in the courtroom or if it is more convenient for you to go to Mr. Beller's office. You will cause less suspicion that way if you do that. You can have the defendant Papa kept in the building until 4:30 if that is helpful to you.

Furthermore, I am marking my memorandum sealed.

MR. FISHER: Thank you, your Honor. Thank you very much.

THE COURT: But a copy of it will be given to each of you.

MR. BELLER: Should this portion be sealed as well?

THE COURT: Yes, and anything in chambers likewise and I trust that our docket sheets are complete. Our docket sheets in the Clerk's office show what is sealed and not sealed and I charge both of you gentlemen as lawyers in this matter to see to it. I am afraid there are some papers which the court has received which may not have gotten on the docket sheet at all. They have simply been held in chambers and dealt with by the court. In view of your

present attention I want to have a full and correct docket sheet. Of course I want you to also and I am sure the government wants to.

MR. BELLER: Sure.

THE COURT: I would also like you to keep me fully apprised so we know where we are going and what we are doing.

Where will you both be?

MR. FISHER: I would like to confer with Mr. Papa downstairs for about a half hour and then I will go to Mr. Beller's office.

THE COURT: All right, then I will have my clerk telephone Mr. Beller as soon as I file my memorandum, which is only held up by mechanical difficulties.

MR. BELLER: Thank you, your Honor.

THE COURT: Will you each confer with the court's minute clerk to make certain that our dockets are correct.

(End in camera discussion.)

(In open court.)

THE COURT: All of you and the other defendants are to be here in person Monday morning at 10 o'clock.

One other thing while I have you here. Of course we don't have all the attorneys.

MR. FISHER: Everyone but Mr. Laifer.

THE COURT: We always have the question of challenges and I think you ought to talk with each other about challenges. Since we are going to have a sequestered jury and I am going to have to grant excuses for people whose circumstances in life don't permit them to be sequested. I don't like to make it too onerous. On the other hand I think as attorneys you should all sit down with each other and see what you think is a fair arrangement and don't confront me the last minute with the problem on Monday morning. So I suggest you address yourselves to that when time permits. Otherwise we will be in recess until Monday morning.

So my record will be complete, I am marking Dr. Lewis Blondin's certificate dated January 15, 1975, as a Court's exhibit in this hearing.

(Court's Exhibit 1 marked in evidence.)

THE COURT: All right, Monday morning.

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Wallace Musoff	4	9		
James O. Druker	28	56	64	69

EXHIBIT INDEX

Defendants	In Identification	In Evidence
A		50
Court		
1		75

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

against :

VIRGIL ALESSI, : 75 CR 295

Defendant :

----------x

United States Courthouse
Brooklyn, New York

January 9, 1976
11:30 a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD,

U. S. D. J.

SHELDON SILVERMAN
Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: RAYMOND DEARIE, ESQ.,
Assistant U.S. Attorney

GINO E. GALLINA, Esq.
and
JOEL BRENNER, Esq.
For the Defendant

THE CLERK: United States of America versus Virgil Alessi.

THE COURT: You have a motion for a continuation and a motion for dismissal on double jeopardy grounds. I don't know how on the first motion, I don't know how I can say that somebody's picture being in a gallery in the New York Times a month ago is going to deprive him of a fair trial today. Most of these jurors read the Daily News and Newsday anyway.

MR. GALLINA: That's true. The Times is pretty well a city-wide paper. It's the character of the statements in the newspaper that were prejudicial. Though there was one--

THE COURT: Sunday morning Times, is that right?

MR. GALLINA: Well, it was quite prominent.

THE COURT: I saw the article, but not the pictures.

MR. GALLINA: There was a gallery of photographs running across the whole top of the page, with Mr. Alessi's photograph being about the size of a passport photo. That is not the first occasion. Of course he's had other adverse publicity of similar nature, even more prominently, in the Daily News.

That was a number of months before this, so we didn't bring that to the Court's attention. We thought the impact of that had dissipated.

THE COURT: Yesterday's headlines might be remembered, but not a month ago. As far as the general attitude toward drugs, that's something you have to face. The jurors have indicated to me that they can determine whether a man is guilty or not. General attitude is just toward the seriousness of the crime, but that, also, affects the jurors' attitude that they shouldn't put a person in jeopardy of long jail sentences.

MR. GALLINA: If your Honor is wont to deny the motion, I would ask your Honor, of course, to consider extraordinary instructions or questions on voir dire to the jury concerning the matter.

THE COURT: You give me your questions and I'll consider them.

MR. GALLINA: Thank you.

THE COURT: You indicated, I think, I should try the Fergante case, which is a bank robbery where there are co-defendants who are going to testify. I might put this over until the 19th. Would you give me time to decide your motion on double jeopardy.

MR. GALLINA: Of course.

THE COURT: Tell me how you work an income tax case into a double jeopardy of a narcotics plea.

MR. GALLINA: We articulated, we hope.

THE COURT: You say the last count which involves as an element deriving substantial income, but it's a different statute.

MR. BRENNER: Might I be heard on that?

MR. GALLINA: Mr. Brenner actually prepared the motion in the office. Though I'm familiar with it, I would like his support at this point, if your Honor won't mind.

THE COURT: All right, I'll hear Mr. Brenner.

MR. BRENNER: Basically, our claim, Judge, is that what we really have to deal with is the entire context in which the plea is worked out. No. 1, it was worked out in conjunction with the plea that was worked out for Vincent Poppa. That particular plea did end up including a tax case reference, because, apparently, a tax investigation had proceeded far enough along so that the United States Attorney's office had been made aware of it.

Our contention, firstly, is that, having been made aware of the fact that Poppa had tax problems, the fact Alessi was allegedly his partner should have alerted everyone to the fact there were tax

implications with that of Alessi. At any rate, you're dealing with an individual who has been charged with the kind of acts Mr. Alessi has been charged with. When you're dealing with drug trafficking, you must be aware that there are income tax implications.

THE COURT: You're trying to ask the Government to bargain away a criminal charge; it seems to me you ought to be pretty clear what you're asking the Government to do.

MR. BRENNER: I think it really was subsumed within the Poppa plea, I think everyone more or less naturally assumed the tax implications of Mr. Alessi's situation, although apparently not as fully developed with Mr. Poppa, nonetheless were taken within the plea.

When Poppa pled, Jimmy Drucker, the Assistant, said to the Judge -- I'm not sure if it was your Honor -- no, Judge Travia -- he said to him, "Judge, the income tax aspect of this case arises out of the drug thing. Therefore I think your Honor should give him concurrent sentences."

The 848 count, the only reason I brought it up was to show there are income tax implications, implicit, if not explicit, at any time you're dealing

with a charge of large scale drug trafficking and you have an 848 count.

I did also quote to your Honor the New York Law Journal article which appeared just about a month ago, by the ex-Commissioner Mortimer Kaplan, in which he emphasized how closely the IRS works with the Strike Force's Department of Justice on developing the tax implications of major drug trafficker cases. Those were his precise words.

As a matter of fact, on the way over here from the Southern District, Mr. Gallina and I heard a Senator discussing the fact that IRS should not have some kind of a staff cut because it's so important that they be able to develop leads, especially with regard to large scale narcotics traffickers, because these people obviously are in it, if they are in it, for the money.

MR. GALLINA: Of course, your Honor, the plea, as I negotiated--

THE COURT: As I recall it, Poppa got a long sentence. What did Alessi get?

MR. BRENNER: Five years suspended.

MR. GALLINA: That was part of the plea negotiations. I'm sure Mr. Alessi was happy with the deal he got. The Government was apparently

happy with it because that's what they negotiated. It was implicit in the plea negotiations, as your Honor remembers from the testimony as Mr. Drucker said, that the plea was to cover all the events and circumstances that arose at that time out of the investigation that they then had pending against Mr. Alessi.

These investigations involved these very matters.

THE COURT: I'm not sure it was as clear as you make it.

MR. DEARIE: I'll take issue with that characterization. I would like very briefly to refer--

THE COURT: Wait a minute.

Mr. Brenner and Mr. Gallina, are you through?

MR. BRENNER: I'm sorry, I didn't hear what your Honor said.

THE COURT: I didn't want to hear Mr. Dearie until your argument is complete.

MR. GALLINA: In fact, it's quite evident from the method of proof that the Government has outlined to us in an informal discovery procedure occasioned between Mr. Dearie and Mr. Hoffman of my office, which occurred in the last couple of days,

it's my understanding that the Government intended to present evidence in approximately three stages, the last stage of which will be witnesses who will testify as to narcotics activities, just the manner of narcotics business, the fact that he earned his income from narcotics activities, even though the Government here admits it's not going to be able to show any more income than that for which Mr. Alessi admits o his filings.

In other words, they are going, with the amounts of income on the filings, that he filed X number of dollars in one year, they say yes, that's all they can prove. They still want to go ahead.

We say it will prejudice the jury. They still say if their formula, to go ahead, show the manner of his obtaining this income was from a criminal activity which is surreptitious, which the very fact he didn't file those years--

THE COURT: I haven't ruled that evidence is admissible yet.

MR. GALLINA: The Government wants to utilize that type of evidence in this case, which further reinforces our position that that very evidence which was the evidence of the cases at that time,

the evidence envisioned by Mr. Drucker at that time, is the evidence now to be presented in the case, the very narcotic activities that they were speaking about.

It's the desire of the Government to present such evidence now. It just goes to prove our point that the jeopardy here lies. It's that evidence that shouldn't be permitted, not only during the trial, but it's that very underlying charge which should not be permitted for Mr. Alessi to have to face again.

THE COURT: Mr. Dearie?

MR. DEARIE: If I may, before I forget, just to correct a statement -- we'll get into this further as we proceed to trial -- we are going to accept for purposes of our proof the figures of Mr. Alessi as he included them in his late filing, the four years in question. That is not to say that we agree or that we contended or represented that we are not going to be able to prove that at least circumstantially, at least the years in question, Mr. Alessi might have had income in excess of the figures he recited.

THE COURT: How are you going to prove it?

MR. DEARIE: First, as I said, there is going

to be two phases in terms of the income. The second phase is going to be through the expenditure method, your Honor. Certain expenditures Mr. Alessi made on behalf of himself and immediate family during the years in question.

The third phase is going to take the form of testimony of people with whom Mr. Alessi dealt in the sale and exchange of large and high quantities of narcotics.

Essentially, that will be it. The first phase, of course, being just to round out the picture, the specific or technical requirements of the tax charges.

THE COURT: Have you given him the list of the expenditures that you're going to prove?

MR. DEARIE: I'll give Mr. Hoffman anything he requests.

THE COURT: I think this has some bearing on the double jeopardy claim.

MR. DEARIE: I should think so.

I should state to your Honor this is not in a technical sense an expenditure case. On the defendant's own filing creates a commission, proof of all the elements save one, that is his criminal intent. To that extent we feel we should embark

upon phases 2 and 3, showing the expenditures, the nature of the expenditures, pitted against the nature and extent of his stated income, and finally the narcotic phase according to your Honor's rulings, of course.

I should like very briefly in connection with this to draw your Honor's attention to page 5 of the application to dismiss in Mr. Gallina's affidavit where he quotes counsel for Mr. Poppa in the last paragraph, which reads, "In short, Judge, Mr. Alessi's plea to the superseding information was in satisfaction of 72 CR 473," that which has been popularly referred to as the Strike Force, Eastern District Strike Force narcotics conspiracy indictment.

"We submit for the purposes of these motions, your Honor, that was identical to a plea to that indictment."

Despite all the conclusions, and the representations, and the statements as to how obvious it is that this "package" included the possible tax ramifications, it is our contention that the disposition of Mr. Alessi, what he enjoyed before Judge Travia, was to afford him exactly that which the law of double jeopardy would afford him. In other

words, he go to trial on that indictment or, if you will, on the superseding information, nothing more. There is not the slightest reference.

On the bottom of page 5 there is this non sequitur that kind of haunts this issue with respect to Mr. Poppa, the statement that Mr. Poppa was permitted to plead to a hastily drawn un-numbered information demonstrating that the plea was a mere formality for closing the investigation, referring, I assume, to the tax investigation.

Of course, if it was a mere formality, the question looms rather long: for what possible purpose did that plea serve if in the mind of counsel, both for the Government and for Mr. Poppa, the tax implications of that conspiracy charge were to be covered by the plea, or disposition with respect to the narcotics case?

With respect to the Court's enlightenment, at this time, in September of 1972, there was no Alessi criminal tax investigation. The Alessi tax case had not gone to IRS intelligence as of the date of this plea.

THE COURT: Had not gone where?

MR. DEARIE: IRS intelligence, would then become in a real sense a criminal investigation.

Essentially, what Mr. Gallina and Mr. Hoffman are stating is that the Government in a very real sense at the time to bargain away something in fact did not exist at that time and that they, both the Strike Force and for that matter the United States Attorney, were unaware, I think it is clear on the face, that it was not the intent. The intention was to protect him of being prosecuted for a narcotics conspiracy deriving its factual source from the conspiracy that was disposed of by the plea.

MR. GALLINA: Your Honor, I presume Mr. Dearie is finished.

MR. DEARIE: I am.

MR. GALLINA: The information was drawn up for Mr. Poppa to plead because during the negotiations I had asked whether or not that they had any formal investigation and they said that they had sufficient evidence, had gone forward, by the Internal Revenue Bureau, for them to put together sufficient data on an information for Mr. Poppa to plead at that time.

It was for that reason that was included. It was just to cover the bases at that time. The negotiations for Mr. Poppa and Mr. Alessi were one and the same. The idea was that all the events

and all the circumstances surrounding their activities which were covered by that indictment were to be covered by that plea. That was the promise.

We're not going just by the formal plea in court. We're also urging upon your Honor the understanding of the prosecutorial promise as to the non-prosecution for all the events and circumstances which would flow from their investigation at that time.

Obviously, the Government was pursuing step by step, as methodically as they could, each and every element of criminality that involved that pattern of conduct. They started with the narcotics investigation and as is done with every one of these cases, once the narcotics prosecution is on its way, they begin the Internal Revenue ramifications or implications of it.

That had developed sufficiently far, formally with the Internal Revenue Service, for us to formulate a hastily drawn up pleading to cover any event at that point. It had not proceeded to that point with Mr. Alessi, officially, at that time, but that did not mean the same ingredients, the same impact, the same implications did not flow from the promise. It was understood. That was understood by all implications of an ordinary

and reasonable person dealing in those plea negotiations.

THE COURT: I'll try to decide it by Thursday. If I should dismiss, you don't have to be ready. If I don't, plan to be ready on the 19th for trial.

MR. GALLINA: One point, the Government points out that they might prove additional income; however, as your Honor can see from the face of the indictment itself, the Government in its own indictment states that it will not accuse him in those years of having earned income any more than that which he filed.

MR. BRENNER: I would like to ask one thing. If the Government is going to put in formal papers, I would like a day or two to respond, if I feel it's necessary.

THE COURT: Do you have any papers?

MR. DEARIE: I intend, your Honor, I should state for your Honor, I came into this Alessi matter rather recently; facing the possible trial date of Tuesday of next week, I have concentrated most of my effort in familiarizing myself with the case, meeting with Mr. Hoffman.

I would like to make one inquiry of the Court, again because I'm in this matter so recently: Is

the Court, or does the Court or is the Court in possession of the affidavit of Mr. Drucker that was prepared in connection with the proceeding before Judge Bonsal on a similar motion, which I understand was denied today, dated December 1975.

THE COURT: No.

MR. DEARIE: I would like permission to supply the Court with that.

THE COURT: I have some of the material of Mr. Drucker.

MR. BRENNER: The hearing.

THE COURT: On the Poppa double jeopardy motion.

MR. GALLINA: The jeopardy motion in this district is substantially different than the one before Judge Bonsel insofar as this is an actual jeopardy motion. The motion before Judge Bonsel was not a jeopardy motion. It was a due process argument, having crossed district lines, et cetera, and different times. I don't think we can equate the two in any fashion.

As far as housekeeping is concerned, your Honor, so your Honor's scheduling will in no way be affected by my failing to convey information to you, it's apparent we're going ahead in a ten-

defendant case which Mr. Alessi is one of the lead defendants in the Southern District. The case is to start the Monday following this Monday, which is the 20th. It's been estimated by the Government that their case will take approximately three weeks.

I would presume all the defendants would at least have a case encompassing a week past that, ten defendants to equate at least a week's work would not be unusual, with another week for the finishing touches on the trial.

There is a five or six week hiatus at the very minimum before we can get back to the case, because of the actual absence of Mr. Alessi in another district, in another trial. I don't see how then your Honor setting this case down for trial on--

THE COURT: If I start on the 13th, it won't be finished by the 20th anyway.

MR. GALLINA: No. That's been agreed to. Not only that, your Honor, your Honor's decision on this motion would, under U.S. v. Beckerman, might also be appealed. That would necessitate probably the same period of five to six weeks to develop, so that while he's on trial, we can develop the appeal here on this, your Honor's decision, if your

Honor is wont to deny the motion.

THE COURT: I'll keep it for the 19th, with the probability it won't be reached.

MR. BRENNER: Do I get a few extra days?

THE COURT: When is yours going to be in?

MR. DEARIE: I'll need a day or so, your Honor. I want to have Mr. Drucker prepare an affidavit for your Honor and some brief affidavit in opposition.

THE COURT: Get it in Tuesday. You'll have until Thursday.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

VIRGIL ALESSI,

Defendant

NOTICE OF APPEAL

Ind.No. 75 Cr. 295

SIRS:

PLEASE TAKE NOTICE that VIRGIL ALESSI hereby appeals from an order of the Hon. Orin G. Judd dated January 22, 1976 denying the defendant's motion to dismiss the indictment herein and from each and every part of said order.

Dated: New York, New York
January 22, 1976

Yours, etc.,

JEFFREY C. HOFFMAN
Attorney for Defendant
30 Broad Street
New York, New York 10004
(212) 944-1550

TO: Hon. David Trager
United States Attorney

Clerk of the Court
Eastern District of New York

Recd 3/15/76
Evelyn Cohen